

VERMONT STATE BOARD OF EDUCATION

MANUAL OF RULES AND PRACTICES

TABLE OF CONTENTS

SECTION	TITLE	PAGE
	Cover Sheet	
1100	THE STATE DEPARTMENT OF EDUCATION.....	1
1110	Establishment.....	1
1120	Powers and Duties.....	1
1130	Structure of the State Department of Education.....	1
1200	State Board of Education.....	1
1210	Organization	1
1220	Meetings	1
1230	Rules of Practice	2
1240	Exceptions to Rules.....	7
1250	Discrimination	7
1251	Reasonable Accommodations.....	7
1252	Instruction for Homebound and Hospitalized Students	8
1253	Hearings Under Section 504.....	8
1260	Waivers.....	8
2000	Gifted and Talented Students.....	1
2194	Educational Support System	1
2195	Grant Applications for Inservice Training Funds	1
2220	Independent School Program Approval.....	1
2228	Special Education Approval Procedures	6
2229	Corrections Education Program.....	11
2230	Approval of Tutorial Programs.....	11

SECTION	TITLE	PAGE
2231	Approval of Distance Learning Schools	1
2232	Statutory Authority	1
2233	Definition.....	1
2234	Procedures and Standards.....	1
2240	Post-Secondary Schools	1
2240	Certification of Post-Secondary Schools.....	1
2241	Certification of Vermont-Based Post-Secondary Schools	1
2242	Certification of Post-Secondary Schools Doing Business in Vermont whose Primary Operation Lies Outside of Vermont	3
2243	Review Process - Schools Chartered In and Out of Vermont	5
2250	Preservation of Post-Secondary Institutions' Student Records	12
2266	Post-Secondary Correspondence Schools	13
2270	Private Kindergarten Approval	1
2300	Length of School Day and Year.....	1
2343	Vermont Secondary Equivalency Program	3
2350	Driver and Traffic Safety Education Programs.....	4
2360	Special Education & FAPE.....	1

2370	Vocational-Technical Education - Definitions	1
2371	Entitlement to Technical Education.....	5
2372	Statewide Provision of Technical Education.....	6
2373	Adult and Post-secondary Technical Education Programming	7
2374	Service Regions	8
2375	Governance	11
2376	School Quality Procedures	14
2377	Technical Education Program Evaluations	15
2378	Safety in Technical Programs.....	15
2379	Required Staffing of Technical Centers.....	16
2380	Quality Criteria for Technical Education Programs & New Program Approval	17
2381	Pre-Tech Programs.....	18
2382	Instructional Time	19
2383	Program Completion.....	19
2384	Program Advisory Committees.....	22
2385	Work-based Learning.....	22
2386	Career Development.....	24
2387	Student Services.....	25
2388	Credits and Graduation Requirements.....	25
2389	Reporting Requirements for Technical Education.....	26
2390	Establishing the Costs for Technical Education.....	26
2391	Calculation of Technical Education Tuition for Technical Centers.....	28
2392	School District Payments to Technical Centers.....	29
2393	Tuition Reconciliation.....	29
2394	Other Tuitions for Technical Education Programs.....	30
2395	State Support for Technical Education.....	31
2396	Equipment: Inventory, Maintenance.....	32
2397	Use and Maintenance of Technical Education Facilities.....	33
2398	Collaborative Programs.....	34
4SECTION	TITLE	PAGE
2400	Adult Education	1
2410	Adult Basic Education Funding Formula.....	3
2411	Transition Provision.....	4
2500	School Accountability System Based on Student Performance.....	1
2505	Statutory Authority	2
2510	Statement of Purpose	2
2515	Statement of Policy and System Overview	2
2520	Definitions	3
2525	Operations Manual for the Accountability System Based on Student Achievement	4
2528	Technical Advisory Panel (TAP).....	5
2530	Committee of Practitioners (CP).....	5

2535	Validity of State Assessment Results and Other AYP Determination Data.....	6
2540	Accountability for All Students and Annual Determinations.....	6
2545	Accountability Determinations for AYP Groups	6
2550	Small School Review	6
2555	Accountability Reports.....	6
2560	Identification of Schools and LEAs Not Making AYP for Two Consecutive Years	7
2565	Required Actions for Identified Schools and LEAs	7
2568	Appeal of Identification and/or Required Actions.....	7
2570	Exiting Identification After Two Consecutive Years of Making AYP.....	8
2575	Commissioner’s Recommendations to the State Board for Schools Or LEAs Not Making AYP for the Fourth Consecutive Time.....	8
2575.1	State Board Action on Commissioner’s Recommendations and Appeal Of State Board Decision.....	8
2580	School and LEA Public Recognition.....	8
3000	School District Organization	1
3220	Supervisory Union Adjustments.....	1
3230	Vacancy of Superintendency	2
3240	Superintendent	3
3250	Fiscal Operations	3
3260	Definition of Enrolled Pupils.....	4
3300	Australian Ballot Budget Votes Under Act 60.....	5
4000	Unsafe School Choice Option.....	1
4100	Student Safety	1
4200	Alcohol and Drugs	1
4220	Prescription Drugs	4
4300	Disciplinary Action.....	1
4312	Discipline Procedures for Students who are not eligible for Special Education Services, but who are or may be Qualified Individuals With Disabilities under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794; 34 CFR §104 et seq.....	2
4313	Discipline Procedures for Students Eligible for Special Education Services	3
4400	Home Study Students.....	1
4403	Part-time Enrollment of Home Study Students in Public School Academic Programs	1
4404	Participation of Home Study Students in Public School Co-curricular and Extra-curricular Activities.....	2
4405	Use of School Facilities by Home Study Students	4
6000	School Buildings and Sites	1
6001	School Bus Idling	1

6100	Building Projects Eligible for State Aid	3
6115	Application Procedures for Construction Aid	5
6124	The Maximum Cost for State Participation.....	8
6134	Costs Eligible for Construction Aid.....	13
6140	Lighting	18
6145	Energy Retrofit Projects.....	20
6200	Variance.....	20
6300	General rules for Pre-qualification of Bidders on Contracts over \$250,000	21
6400	Construction Management	23

SECTION	TITLE	PAGE
7000	Relationship With Public, Other Agencies, and Institutions.....	1
7100	Interstate Agreements.....	1
7200	Relationship with Other Vermont State Agencies.....	1
7300	Relationship with Other Educational Institutions and Agencies	1
8100	School Lunch Programs.....	1
8200	Approval of New Family Day Care Home Sponsors.....	2
8220	Process.....	2
8230	Criteria for Approval	4
8240	Establishment of New Territories	5
8250	Appeals Process	5
8260	Designation of Day Care Home Sponsors and Territories	6
9000	Public Bids.....	1
9001	Definitions	1
9002	Waiver of Public Bidding Requirements	2
9100	Net Cost Per Pupil.....	1
9103	General Rule	1
9104	Definitions	1
9105	Elementary/Secondary Net Costs	4
9200	Full Time Equivalent Enrollment of Pupils	6
9300	Allowable and Extraordinary Transportation Expenditures.....	8
9400	Sliding Scales [Repealed June 30, 1999]	
9500	Reporting Students for Whom English is Not the Primary Language	11
10000	Coordination of Services to Children and Adolescents With a Severe Emotional Disturbance	1
10400	Guidelines for Local Interagency Team Procedures.....	1
10500	Protection of the Right to Consent and of Confidentiality.....	5
10600	Dispute Resolution.....	5

BOARD OF EDUCATION

MANUAL OF RULES AND PRACTICES

JAMES DOUGLAS, GOVERNOR

, COMMISSIONER OF EDUCATION

STATE BOARD OF EDUCATION MEMBERS

Tom James, Chair

Ruth Stokes, Vice Chair

William Corrow

Kathy Larsen

Alex Melville

Fayneese Miller

Chris Robbins

Tess Savage

Susan Schill

Brian Vachon

Essex Junction

Williston

Williamstown

Wilmington

Woodstock

South Burlington

Danville

Bristol

Belevidere

Montpelier

1100 THE STATE DEPARTMENT OF EDUCATION

9/17/07

1110 Establishment

1111 Definition: 16 VSA § 11(14)

1112 Departments Created: 3 VSA § 212

1120 Powers and Duties

The powers and duties of the Department of Education are derived from the powers and duties of the State Board of Education and the Commissioner of Education. Title 16 Vermont Statutes Annotated.

1130 Structure of the State Department of Education

The organizational structure of the Vermont Department of Education shall be as recommended by the Commissioner and approved by the State Board of Education.

1200 State Board of Education

1210 Organization

1211 Membership See: 16 VSA § 161

1212 Removal of Members See: 16 VSA § 162

1213 Compensation See: 16 VSA § 1010

1214 Officers See: 16 VSA § 161, 211

1215 Powers and Duties See: 16 VSA § 144-174, 211, 213, 3011-3019

1220 Meetings

1221 Schedule

Regular meetings of the State Board are scheduled on the third Monday and/or Tuesday of each month to the extent practical.

1222 Rules of Order

“Robert’s Rules of Order” shall govern the conduct of state board meetings.

1223 Agenda

The agenda of state board meetings shall be prepared by the commissioner or his designee upon consultation with the chairman. Members of the state board may add items by request. The agenda shall be distributed as close to two weeks prior to a regular meeting as practical.

1224 Minutes

Minutes shall be prepared in accordance with law and shall be distributed to individuals or groups on request.

1225 Special Meetings See: 16 VSA § 163

1230 Rules of Practice

1231 Administrative Procedure Act

Hearings, appeals, rule-making, and declaratory rulings shall be conducted in accordance with 3 VSA Chapter 25. The commissioner or his designee shall prepare and sign all forms necessary for the proposal and adoption of rules.

1232 Formal Proceedings

A formal proceeding is a proceeding authorized by a provision of Title 16 of the Vermont Statutes Annotated or the State Department of Education’s Manual of Rules and Practices which designates the State Board of Education, the Department of Education or the Commissioner as the authority to sit in a quasi-judicial capacity and make a determination. The authority designated in a particular provision of statute or rule will hereafter in these rules be referred to as the hearing authority.

The provisions in statute or rule calling for a formal proceeding include but are not limited to:

- | | |
|-----------------------------------------------------------|-----------------------------------------------------|
| 1) 16 VSA 164 (5)
Rule 5713 | Licensing of teachers and
other school personnel |
| 2) 16 VSA 165
Rule 2122.6 | School Quality Standards |
| 3) 16 VSA 164 (14), 166
Rule 2248.1 | Private and Independent
School Approval |
| 4) 16 VSA 164 (14), 166a | Home Study |
| 5) 16 VSA 828 | Tuition |
| 6) 16 VSA 1075 | Residency |
| 7) 16 VSA 168 (b), 2944 (c)
Rules 2365.1.6 – 2365.1.11 | Special Education |

A “party” to a formal proceeding is an individual or legal entity actively taking part in a legal proceeding and directly affected by its outcome. For purposes of these rules a “person” shall be defined by 1 VSA 128.

1232.1 Commencement of Formal Proceedings

- | | |
|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1232.1.1 | A party to a formal proceeding before the hearing authority may represent himself or herself or he or she may be represented by an attorney or other representative. |
| 1232.1.2 | A formal proceeding before the hearing authority shall be initiated by filing a petition with the hearing authority. Except for interventions during the course of a hearing all persons who wish to petition for permission to intervene in formal proceedings shall give notice in writing of intent to do so to the hearing authority. The grant of the petition to intervene under this rule and Rule 1232.2.5 is within the discretion of the hearing authority and shall be based on whether the petition is relevant to the formal proceedings or otherwise necessary to a full and complete disposition of the formal proceeding. The hearing |

authority shall notify all other parties upon intervention of a new party.

1232.1.3 All notice given to or by an attorney of record for a party in a formal proceeding shall be considered in all respects as notice to or from that party.

1232.1.4 When an attorney has appeared for a party in a formal proceeding, he shall remain attorney for such party until he has been granted leave to withdraw by order of the hearing authority.

1232.2 Filing and Service of Documents

1232.2.1 The document initiating a formal proceeding before the hearing authority shall be signed by the person filing the document and shall be filed with the hearing authority in quadruplicate. The document shall include the following information:

- (a) A statement of the legal authority of the hearing authority to determine the case;
- (b) A short and plain statement of the issues involved;
- (c) The outcome sought.

1232.2.2 All papers filed with the hearing authority in formal proceedings shall be on paper measuring 8 ½ x 11 inches. Filing shall be deemed to occur when a document or paper is received by the hearing authority or the Department of Education.

1232.2.3 Every document or paper filed by a party subsequent to the initial petition in a formal proceeding shall be served upon all other parties. The hearing authority shall serve a copy of the initial petition upon all parties entitled by law to be served. Service shall consist of hand delivering a copy or mailing

it to the party's last known address. Delivery of a copy means handing it to the attorney or to the party, or leaving it at his or her office with the person in charge thereof, or if the office is closed or the person to be served has no office, leaving it at his dwelling, house, or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail shall mean first class mail, in a sealed and properly stamped envelope. Service by mail is deemed complete upon posting the mail in a proper United States Post Office receptacle. The document or paper shall contain a signed statement stating upon whom, and the means by which, the document has been served.

1232.2.4 The response to an initial petition by persons permitted or required by law to respond shall be filed with the hearing authority and all parties by the date of the pre-hearing conference, if any, authorized by Rule 1236 of these rules, but no later than seven days prior to the date set for the hearing of the case.

1232.2.5 A petition for permission to intervene in a formal proceeding must set forth the grounds of the proposed intervention, of position and interests of the petitioner in the proceeding, and whether the petitioner's position is in support of or in opposition to the remedy sought by the person initiating the proceeding.

1232.2.6 In its discretion the hearing authority may treat any written communication to it concerning a matter within its legal authority as a petition initiating a formal proceeding.

1232.2.7 Written memoranda in support of a party's position, if any, shall be filed no later than 5 days following the conclusion of a hearing. This 5-day requirement may be waived by the hearing authority for good cause.

1232.3 Hearings

- 1232.3.1 An oral hearing shall be held in every formal proceeding except that hearing may be waived in the discretion of the hearing authority: (1) in a formal rule-making or declaratory ruling proceeding, if no request for a hearing is made at least five days prior to the hearing date in accordance with 3 VSA 803(a); and the petitioner, if any, waives hearing; and (2) in any other formal proceeding if all the parties file written waivers of opportunity for hearing.
- 1232.3.2 Upon the filing of a petition initiating a formal proceeding, or upon the initiation of such a proceeding by the hearing authority on its own motion, the hearing authority shall order or otherwise assign a time and place for the hearing thereof and the hearing authority shall cause written notice of the hearing to be served upon each party.
- 1232.3.3 Hearings shall be transcribed at the request of any party made at least 10 days prior to the hearing upon payment of the reasonable costs thereof.
- 1232.3.4 The admissibility of evidence in all formal proceedings before the hearing authority will be determined under the criteria specified in 3 VSA 810 (1) – (4).

1233 Petitions for Rule-making

Petitions for the adoption, amendment, or repeal of any rule will be entertained by the State Board of Education or the Department of Education. Such petitions shall be filed with the commissioner. Such petitions will be considered and disposed of pursuant of the procedure specified in 3 VSA 806.

1234 Informal Proceedings

Informal proceedings shall be governed by procedures that the board, department, commissioner, or hearing officer deems appropriate under the circumstances.

1235 Declaratory Ruling

Petitions for declaratory ruling as to the applicability of any statutory provision or of any rule or order of the state board of education or the Department of Education will be entertained by the board or the department. Such petitions shall be filed with the commissioner and will be considered and disposed of promptly.

1236 Hearing Officers and Pre-hearing Conferences

1236.1 The state board, department, or commissioner may appoint a hearing officer who shall conduct pre-hearing conferences, conduct any hearings that may be required and prepare proposed findings of facts and conclusions of law for a decision by the hearing authority. A designated hearing officer shall have all other duties and powers of a hearing authority as provided in these rules.

1236.2 The state board, department, or commissioner shall review the proposed findings of fact and conclusions of law and render the decision.

1236.3 The hearing authority may order the parties to attend pre-hearing conferences prior to formal hearing.

1240 Exceptions to Rules

The Board of Education or the Department of Education may take a proceeding partially or entirely out of these rules when the law so permits and in its opinion the interest of the public so requires.

1250 Discrimination

In order to provide equal educational and equal employment opportunities, no student and/or public school employee in the State of Vermont shall be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity receiving federal and/or state funds as the result of or based on sex, race, color, creed, national origin, sexual orientation, or solely by reason of handicap/disability.

1251 Reasonable Accommodations

When a student with disabilities is not eligible for special education, but is determined to have a disability, accommodations shall be made as needed in such areas as adaptations, including behavior management interventions, and

supplemental aids and services. Other regulations contained in Section 2360 et seq. shall not apply to these students. See rule 2362.2.6.

1252 Instruction for Homebound and Hospitalized Students

- (1) Pupils are eligible for instruction at home or in the hospital whenever they are unable to attend school for a period of ten consecutive school days or more because of pregnancy or a medical disability.
- (2) Homebound or hospitalized elementary pupils shall receive instruction for no less than an average of six hours per week unless inconsistent with medical recommendations. Homebound or hospitalized secondary pupils shall receive instruction for no less than an average of two hours per subject per week unless inconsistent with medical recommendations. Instructional materials shall be provided by the district of attendance.

1253 Hearings Under Section 504

Conflicts and alleged violations under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 may be resolved through due process hearings in the same manner as for a special education due process hearing under Rule 2365.1.6 All the procedures for such a due process hearing according to Rule 2365.1.6, including the time limits of 16 VSA §2957, apply to Section 504 hearings. The hearing officer may award declaratory and injunctive relief but not damages, costs or attorney's fees. In addition to, or in lieu of a due process hearing, a person may file a complaint with the Office of Civil Rights in Boston, MA.

1260 Waivers

The State Board of Education will consider waiving its established regulations when necessary for school districts to carry out locally established objectives.



Vermont State Board of Education Education Quality Standards

State Board Rule 2000

Adopted February 2014

The purpose of these rules is to ensure that all students in Vermont public schools are afforded educational opportunities that are substantially equal in quality, and enable them to achieve or exceed the standards approved by the State Board of Education.



Table of Contents

2000 Education Quality Standards

2100 Statutory Authority

2110 Statement of Purpose

2111 Adoption of Performance Standards

2112 Education Quality Standards

2113 Federal and State Entitlements; Nondiscrimination

2114 Definitions

2120 Curriculum and Instruction

2120.1 Instructional Practices

2120.2 Flexible Pathways

2120.3 Career and Technical Education

2120.4 Personalized Learning Plans

2120.5 Curriculum Content

2120.6 Curriculum Coordination

2120.7 Graduation Requirements

2120.8 Local Graduation Requirements

2121 Professional Resources

2121.1 School Leadership

2121.2 Staff

2121.3 Needs-Based Professional Learning

2121.4 Staff Evaluation

2121.5 Tiered System of Support

2121.6 Interagency Teams

2122 Learning Environment

2122.1 School Facilities and the Learning Environment

2122.2 Access to Instructional Materials

2123 State and Local Comprehensive Assessment System

2123.1 Participation in State Comprehensive Assessment System

2123.2 Development and Implementation of Local Comprehensive Assessment System

2124 Reporting of Results

2125 Continuous Improvement Plan

2126 System for Determining Compliance with Education Quality Standards

2126.1 Filing of Continuous Improvement Plan

2126.2 Review, Secretary's Recommendations, and State Board Action

2126.3 Further Review; Secretary's Recommendations; State Board Action

2127 Variance and Waiver

2128 Effective Date

2000 Education Quality Standards

2100 Statutory Authority: 16 V.S.A. §§164 and 165

2110 Statement of Purpose

The purpose of these rules is to ensure that all students in Vermont public schools are afforded educational opportunities that are substantially equal in quality, and enable them to achieve or exceed the standards approved by the State Board of Education.

These rules are designed to ensure continuous improvement in student performance, instruction and leadership to enable students to attain rigorous standards in high-quality programs.

Nothing herein shall be construed to entitle any student to educational programs or services identical to those received by other students in the same or different school districts. Further, nothing herein shall create a private right of action. These rules are in addition to and, unless otherwise specifically stated, do not supersede other rules contained in the Vermont State Board of Education Manual of Rules and Practices.

2111 Adoption of Performance Standards

Pursuant to 16 V.S.A. §164(9), the State Board of Education will implement and periodically update standards for student learning in appropriate content areas from kindergarten to grade 12. Supervisory union boards shall use the standards as the basis for the development and selection of curriculum, methods of instruction, locally developed assessments, and the content and skills taught and learned in school.

2112 Education Quality Standards

In order to carry out Vermont's policy that all public school children will be afforded educational opportunities which are substantially equal in quality, and in order to ensure continuous improvement in student performance, each public school shall meet the following education quality standards, and annually report to the community in an understandable and comprehensive form as required in 16 V.S.A. §165(a)(2).

2113 Federal and State Entitlements; Nondiscrimination

Each school or supervisory union shall ensure that students are furnished educational and other services in accordance with state and federal entitlements and requirements.

No student in a public school or independent school shall be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity as the result of, or based upon, the student's race, gender, color, creed, national origin, marital status, sexual orientation, gender identity or disability, or any other reason set forth in state or federal non-discrimination requirements.

Each supervisory union shall develop, and each school shall implement, a system of maintaining student records that aligns with Agency of Education statewide data collections; which enables accurate and timely reporting in connection with state and federal data collection requirements; and ensures the accuracy, relevancy and confidentiality thereof, and accessibility thereto; and which is in compliance with the federal Family Education Rights and Privacy Act of 1974 (P.L. 95-380 as amended from time to time).

Student records shall be safely retained. For grades 9-12, the transcripts of graduates and dropouts shall be permanently maintained and the academic records may be permanently maintained.

Each school shall adopt and implement policies consistent with the federal Protection of Pupil Rights Act (20 U.S.C. §1232h) regarding surveys, analyses and evaluations.

2114 Definitions

The following definitions shall apply to these rules unless the context clearly requires otherwise:

1. "Academic record" may include standardized test scores, dates of attendance, alternate graduation plan, Personalized Learning Plan, rank in class, awards, activities, clubs and other information not included in a student's transcript, as locally determined.
2. "Applied learning" means the presentation of subject matter in a way that integrates a particular academic discipline (such as mathematics, science or English) with life experiences both in school and out of school and with personal

workforce applications.

3. “Appropriately licensed educator” means any teacher or administrator requiring a license under 16 V.S.A. Chapter 51 and in accordance with the Rules Governing the Licensing of Educators and the Preparation of Educational Professionals.
4. “Career and Technical Education” means an educational program that supports attainment of a high school diploma, designed to provide students with technical knowledge, skills and aptitudes that will prepare them for further education and enhance their employment options or lead to an industry-recognized credential.
5. “College and Career Readiness” means the student’s ability to enter the workforce or pursue postsecondary education or training without the need for remediation. The student must possess the foundational skills and learning strategies necessary to begin studies in a career pathway in order to be considered college and career ready.
6. “Educational Technology” means instruction and/or preparation in the appropriate use of current technology to provide students with the knowledge and skills needed to communicate, solve problems, and to access, manage, integrate, evaluate and create information.
7. “Mentoring” means the pairing of a mentor with an educator who is either new to the profession or new to the school in order to provide training, orientation, assistance and support. Further, for the purposes of this rule, a “mentor” is an educator who has demonstrated high-quality instructional practice and who has been provided training in mentoring.
8. “Needs-based professional learning” means staff learning based upon needs identified through an examination of student performance and organizational and instructional data, and which is aligned with the school’s Continuous Improvement Plan.
9. “Personalized Learning Plan” means a plan developed on behalf of a student by the student, a representative of the school, and, if the student is a minor, the student’s parents or legal guardian, and updated at least annually. The plan shall be developmentally appropriate and shall reflect the student’s emerging abilities, aspirations, interests and dispositions. Beginning no later than in the seventh grade, the plan shall define the scope and rigor of academic and experiential opportunities necessary for the student to successfully complete secondary school and attain college and career readiness.
10. “Proficiency-based learning” and “proficiency-based graduation” refers to

systems of instruction, assessment, grading and academic reporting that are based on students demonstrating mastery of the knowledge and skills they are expected to learn before they progress to the next lesson, get promoted to the next grade level, or receive a diploma.

11. "School" means an organizational structure designed to facilitate student learning. This could include an individual public school building or a combination of public school buildings with one administration, either of which could include learning opportunities both within and outside of the school building and school day. Where the context suggests that a "school" take some action, the action shall be taken by the superintendent or such school officials as are designated by the superintendent, unless otherwise specified herein or elsewhere in law or regulation. "School" includes a technical center.
12. "Secretary" means the Secretary of Education or his or her designee.
13. "Superintendent" means the superintendent of schools or person or persons assigned the duties of a superintendent pursuant to 16 V.S.A. §242.
14. "Supervisory union" means an administrative, planning, and educational service unit created by the State Board of Education, which consists of two or more school districts, including a supervisory district. For the purpose of these rules, supervisory union also means a supervisory district which consists of only one school district, which may be a unified union district.
15. "Technology Integration" means the infusion of technology into the curriculum as a tool to enhance learning in a content area or multidisciplinary setting, enabling students to select technology tools to help them obtain information in a timely manner, analyze and synthesize the information, and present it professionally.
16. "Transcript" means a formal document certifying and documenting a student's or former student's achievement of state standards and at minimum includes the student's name, date of birth, last known address, years of attendance, courses taken, out-of-school learning opportunities if applicable, and diploma or certificate of completion awarded.
17. "Transferable skills" refers to a broad set of knowledge, skills, work habits, and character traits that are believed to be critically important to success in today's world, particularly in collegiate programs and modern careers.

2120 Curriculum and Instruction

2120.1 Instructional Practices

Instructional practices shall promote personalization for each student, and enable each student to successfully engage in the curriculum and meet the graduation requirements. Classroom instruction shall include a range of research-based instructional practices that most effectively improve student learning, as identified by national and Vermont guidance and locally collected and analyzed student data.

2120.2 Flexible Pathways

Schools must provide students the opportunity to experience learning through flexible and multiple pathways, including but not limited to career and technical education, virtual learning, work-based learning, service learning, dual enrollment and early college. Learning must occur under the supervision of an appropriately licensed educator. Learning expectations must be aligned with state expectations and standards.

Students must be allowed to demonstrate proficiency by presenting multiple types of evidence, including but not limited to teacher- or student-designed assessments, portfolios, performances, exhibitions and projects.

2120.3 Career and Technical Education

Schools serving grades 9-12 shall coordinate with their designated career and technical education center to ensure genuine access and support for all eligible students as required in 16 V.S.A. §1541a.

Schools shall ensure that students receive appropriate career counseling and program information regarding the availability of education and apprenticeship program offerings at career and technical centers. Demonstrations of learning such as credits or grades earned in an approved career and technical education course or program are subject to the requirements of 16 V.S.A. §1545.

2120.4 Personalized Learning Plans

As required in 16 V.S.A. §941, schools shall ensure all students in grades seven through 12 shall have a Personalized Learning Plan, which shall be a written document developed by the student, a representative of the school and, if the student is a minor, the student's parent or legal guardian. The Personalized Learning Plan shall describe

the scope and rigor of learning opportunities and support services necessary for the student to achieve college and career readiness prior to graduation, and to attain a high school diploma. This plan must be reviewed at least annually.

This section is effective in accordance with the rolling implementation dates established in Section 14 of Act 77 of 2013, as may be amended.

2120.5 Curriculum Content

Each supervisory union board shall ensure the written and delivered curriculum within their supervisory union is aligned with the standards approved by the State Board of Education. Each school shall enable students to engage annually in rigorous, relevant and comprehensive learning opportunities that allows them to demonstrate proficiency in

- a. literacy (including critical thinking, language, reading, speaking and listening, and writing);
- b. mathematical content and practices (including numbers, operations, and the concepts of algebra and geometry by the end of grade 10);
- c. scientific inquiry and content knowledge (including the concepts of life sciences, physical sciences, earth and space sciences and engineering design);
- d. global citizenship (including the concepts of civics, economics, geography, world language, cultural studies and history);
- e. physical education and health education as defined in 16 V.S.A. §131;
- f. artistic expression (including visual, media and performing arts); and
- g. transferable skills (including communication, collaboration, creativity, innovation, inquiry, problem solving and the use of technology).

Each school shall provide students in grades K-8 with at least two physical education classes per week. Each school shall provide students in grades 9-12 with one and one-half years of physical education or the equivalent thereof.

Each school shall offer options for students in grades K-12 to participate in at least 30 minutes of physical activity within or outside of the school day. Physical activity may include recess and movement built into the curriculum, but does not replace physical education classes.

Each school shall provide appropriate learning opportunities to all students to support

their attainment of the standards approved by the State Board of Education. As required in 16 V.S.A. §2902, each public school shall provide support for students who require additional assistance in order to succeed or be challenged in the general education environment.

Each school shall provide comprehensive elementary and secondary health and physical education learning experiences, including the effects of tobacco, alcohol and drugs on the human system for all students in accordance with sections 16 V.S.A. §131 and §906(b)(3).

Each school shall ensure students are able to access academic and experiential learning opportunities that reflect their emerging abilities, interests and aspirations, as outlined in the students' Personalized Learning Plans.

2120.6 Curriculum Coordination

As required in 16 V.S.A. §261a(a)(1), the board of each supervisory union shall ensure that each school implements the supervisory union's written and delivered curriculum, which shall be

- a. aligned with the standards approved by the State Board of Education;
- b. coordinated across all grades to prepare students for graduation;
- c. coordinated across the supervisory union, including sending high schools and technical centers;
- d. informed by ongoing review of new research, changing learning opportunities, and updates to the standards approved by the State Board of Education;
- e. designed to enable all students to achieve the graduation requirements; and
- f. integrated with technology across all disciplines.

Each school with a pre-kindergarten early education program must offer high-quality programs as outlined in State Board Rule 2600.

2120.7 Graduation Requirements

A student meets the requirements for graduation when the student demonstrates evidence of proficiency in the curriculum outlined in 2120.5, and completion of any other requirements specified by the local board of the school attended by the student.

This requirement is effective no later than September 2014 for students entering seventh grade and through their secondary school progression, for the anticipated graduation date of June 2020, and with each subsequent incoming seventh grade class.

For students eligible for special education services under IDEA or protected by Section 504 of the federal Rehabilitation Act, the student shall meet the same graduation requirements as non-disabled peers in an accommodated and/or modified manner. These modifications will be documented in each student's Personalized Learning Plan.

The Individual Education Program (IEP) team or 504 Team is responsible for assuring that information regarding the student's individual skills, aptitudes and present levels of performance are incorporated into the student's Personalized Learning Plan. This shall ensure that the proficiency levels to meet graduation requirements are linked to local graduation requirements, individually accommodated and/or modified for students with disabilities, and written into the student's Personalized Learning Plan.

This process shall ensure that any student identified as a student with a disability will receive a regular high school diploma after meeting his/her individual graduation requirements as outlined in their Personalized Learning Plan. The development of an IEP does not supplant a Personalized Learning Plan, nor does a Personalized Learning Plan replace an IEP.

2120.8 Local Graduation Requirements

Each secondary school board is responsible for setting graduation requirements in accordance with these rules.

Local graduation policy must define proficiency-based graduation requirements based on standards adopted by the State Board of Education. As required in 16 V.S.A. §261a(a)(1), it is the responsibility of the supervisory union board to ensure alignment in expectations for all students within a supervisory union.

Schools may or may not use credits for the purposes of demonstrating that a student has met the graduation requirements. When used, credits must specify the proficiencies demonstrated in order to attain a credit and shall not be based on time spent in learning. Further, students may receive credit for learning that takes place outside of the school, the school day, or the classroom. Any credits earned must occur under the supervision of an appropriately licensed educator.

2121 Professional Resources

2121.1 School Leadership

The roles and responsibilities of the school's leadership, including the school board, superintendent and principal or career and technical center director shall conform to applicable provisions in 16 V.S.A. regarding authority and duties.

All school leaders must have sufficient time to carry out their responsibilities in order to focus on improving student learning. To accomplish that, the superintendent or his or her designee must:

- a. supervise a licensed principal who shall be responsible for the day-to-day leadership of the school;
- b. create a school leadership team consisting of administrators and teachers (and students as appropriate) with compensation either in time or financial reimbursement or a combination of both for all teachers;
- c. create professional learning groups for all teachers that meet during school time at least two hours per month and are facilitated by trained teachers;
- d. coordinate the principal's schedule to enable him/her to engage in student learning, such as:
 1. teaching a course or hosting an advisory with students;
 2. mentoring a group of students in developing their Personalized Learning Plans;
 3. providing support for students through support services; or
 4. other methods of student engagement as approved by the superintendent.
- e. provide teacher support and evaluation aligned with the guidelines approved by the State Board of Education; and
- f. minimize, as much as possible, supervision of non-teaching staff by the principal.

The principal shall be answerable to the superintendent in the performance of his or her duties.

Schools with 10 or more full-time equivalent teachers shall employ a full-time licensed principal. Schools with fewer than 10 FTE teachers shall employ a licensed principal on a pro-rata basis.

2121.2 Staff

As required in 16 V.S.A. §1692, all professional staff shall be licensed and appropriately endorsed for their assignment. All classroom staff, including educational support personnel, shall have had adequate academic preparation and training to teach or provide services in the area to which they are assigned.

Each school shall employ instructional and administrative staff members who possess the knowledge and skills to implement the standards in alignment with professional educator standards established by the Vermont Standards Board for Professional Educators.

Each supervisory union shall employ licensed special education staff, and shall ensure each school employs sufficient and qualified staff as needed to identify students eligible for special education services and to implement each eligible student's Individual Education Program and Section 504 plan.

Classes in grades K-3, when taken together, shall average fewer than 20 students per teacher. In grades 4-12, when taken together, classes shall average fewer than 25 students per teacher. The total class roll of a teacher shall not exceed 100 students, except where the specific nature of the teacher's assignment (such as in certain art, music, or physical education programs) is plainly adaptable to the teaching of greater numbers of students while meeting the educational goals of the program.

School boards must establish optimum class size policies as consistent with statutory guidance from the Agency of Education. Class size must comply with state and federal safety requirements.

The services of a certified library media specialist shall be made available to students and staff. Schools with over 300 students shall have at least one full-time library media specialist and sufficient staff to implement a program that supports literacy, information and technology standards. Schools with fewer than 300 students shall employ a library media specialist on a pro-rata basis.

2121.3 Needs-Based Professional Learning

Each supervisory union shall develop and implement a system of appropriate needs-based professional learning for all professional staff, including administrators and other staff involved in student instruction, as required in 16 V.S.A. §261a(a)(5). Time for professional learning should be embedded into the school day.

The school's professional learning system shall be aligned with its staff evaluation and supervision policies, Continuous Improvement Plan, supervisory union and district goals, and shall provide new staff members with appropriate opportunities for professional learning.

Mentoring shall be a component of each supervisory union's needs-based professional learning system. The superintendent or their designee shall determine the specifics of each mentoring program in their school(s) in accordance with the guidelines approved by the State Board of Education, Vermont Standards Board for Professional Educators, and state law addressing mentoring for educators.

2121.4 Staff Evaluation

For the purposes of this section, "staff" includes administrators, educators, and other school employees working with students.

Staff evaluation programs and policies shall be designed and implemented with the goal of improved student outcomes. Such programs and policies shall

- a. be consistent with the provisions of state and federal law and the Vermont Guidelines of Teacher and Leader Effectiveness adopted by the State Board of Education;
- b. include multiple sources of evidence to inform and measure teacher performance;
- c. address the professional learning needs of all staff, including administrators;
- d. address the needs of teachers who are new to the profession, the assignment or the school;
- e. provide supports to improve instructional practice, content knowledge, working relationships (with colleagues, parents and community members), and other

areas as appropriate.

2121.5 Tiered System of Support

In accordance with 16 V.S.A. §2902 and State Board Rule 2194, each school shall ensure that a tiered system of academic and behavioral supports is in place to assist all students in working toward attainment of the standards. This system shall be aligned with the school's Personalized Learning Plan structures, and specific student support services shall be specified within a student's Personalized Learning Plan.

School counseling services shall support the mission and vision of the school and shall be available to all students K-12. The services shall address students' academic, career, personal and social development. Such services shall be aligned and integrated with the work of other professionals in the school setting, as well as those in other educational and human services.

Staffing shall be filled by licensed school counselors and other student support personnel with sufficient staff to carry out the school counseling services, such as guidance counselors, Student Assistance Program counselors, home-school coordinators, English-as-a-Second-Language coordinators and school-based clinicians. At the elementary level, there shall be no more than 300 students per school counselor and other student support personnel. Schools with fewer than 300 students shall employ a school counselor and other student support personnel on a pro-rata basis. At the secondary level, there shall be no more than 200 students per school counselor and other student support personnel.

Health services, including health appraisal and counseling, communicable disease control, mental health, and emergency and first aid care, shall be made available in a confidential manner to students in each school. These health services shall be delivered in accordance with the school district's written policies and procedures, which shall be developed in collaboration with parents and community health resources.

The Vermont Department of Health recommends that schools and supervisory unions implement the School Nurse Leader School Health Services Delivery Model, which is consistent with the principles of the national Coordinated School Health Model, to ensure appropriate access and coverage across their district or supervisory union.

Each school shall engage the services of a person licensed as a School Nurse or

Associate School Nurse. There shall be no more than 500 students per school nurse. Schools with fewer than 500 students shall employ a nurse on a pro-rata basis.

The school shall comply with requirements of state law relative to vision and hearing screening, immunization, and child abuse reporting, and federal law relating to invasive physical examinations in accordance with the Protection of Pupil Rights Act (20 U.S.C. §1232h).

2121.6 Interagency Teams

Schools shall participate in interagency teams as required by 33 V.S.A. §4303 and any other requirement of law.

2122 Learning Environment

2122.1 School Facilities and the Learning Environment

Each school shall maintain a safe, orderly, civil, flexible and positive learning environment, which is free from hazing, harassment and bullying and based on sound instructional and classroom management practices and clear discipline and attendance policies that are consistently and effectively enforced.

The design and operation of the school facilities shall be in full compliance with all state and federal fire, health, and safety, chemical and architectural standards.

Each school's comprehensive plan for responding to student misbehavior, as required by 16 V.S.A. §1161a(a), shall address student behavior, language, classroom attendance, clothing and treatment of property, as well as consequences for violations of policy, and shall be clear and consistently enforced.

Each school shall observe due process requirements as set forth in Rule 4300 *et seq.*

2122.2 Access to Instructional Materials

Each school shall:

- a. provide a learning environment with sufficient supplies and infrastructure to allow for learning;
- b. develop, maintain, and expand as needed a collection of print, digital and

- technology resources, administered by a certified library media specialist;
- c. ensure that the curriculum is supported by necessary digital and print resources;
- d. ensure that students, teachers, administrators and paraprofessionals have access to an organized collection of digital and print materials sufficient and appropriate to support all students in meeting or exceeding the current state and national standards at no cost to the student;
- e. provide students access to the library on a regular basis to use materials for reading, research, and for instruction in the skills needed to select and use information effectively;
- f. provide access to a variety of up-to-date information, assistive, and other technology to support students in meeting or exceeding the standards;
- g. provide broadband Internet service for students and educators to access educational resources;
- h. adopt and implement written policies on electronic resources, acceptable Internet usage, and procedures for handling complaints for both staff and students;
- i. support a schedule that provides opportunities for a library media specialist to collaborate with teachers as they integrate information research skills into their curriculum; and
- j. ensure that students are afforded the opportunity to learn the skills to locate, evaluate, synthesize, and to present information and ideas within content areas using technology integration.

2123 State and Local Comprehensive Assessment System

2123.1 Participation in the State Comprehensive Assessment System

Each school shall administer assessments of student performance using methods developed by the State Board of Education under 16 V.S.A. §164 (9). Students who are unable to participate in district or state assessments shall be given an alternate assessment in accordance with law. Each school shall account for 100 percent of its students in regard to their participation in the state assessments.

2123.2 Development and Implementation of Local Comprehensive Assessment System

Each supervisory union shall develop, and each school shall implement, a local comprehensive assessment system that

June 19, 2001

Rules 2150 – 2161 are added to the State Board of Education Manual of Rules and Practices, and rules 2122.3 and 2123.2 are amended as follows:

2150 Governor’s Diploma

2151 Statutory Authority: 16 VSA §§164(7) and (9), and 179

2152 Statement of Purpose

The purpose of these rules is to implement the provisions of 16 V.S.A. §179 in such a manner as to enable Vermont students to demonstrate a high level of academic achievement. A student's achievement shall be demonstrated by: (1) earning a high school diploma or enrollment in a home study program, in accord with 16 V.S.A. 166b, during the school year when he or she receives the Governor's Diploma, and (2) a high level of performance, as described in these rules, on a series of examinations in English/language arts, mathematics, science, and social studies, and, if approved by the State Board of Education, in other academic areas. Award of a Governor’s Diploma under these rules shall signify that a Vermont student has achieved or achieved with honors designated standards established in *Vermont’s Framework of Standards and Learning Opportunities*.

2153 Definitions

“Commissioner” means the Commissioner of the Vermont Department of Education or his or her designee.

“Examinations,” except as otherwise set forth in 2157, means standards-based examinations in English/language arts, mathematics, science, and social studies. The Commissioner shall select particular assessments on which eligibility for the Governor's Diploma shall be based.

“Framework” means *Vermont’s Framework of Standards and Learning Opportunities*, adopted by the Vermont State Board of Education in Spring 1996, amended in September 1998 and May 2000, and as amended from time to time.

“Headmaster” means the person responsible for the management of an independent school.

“Secondary School” has the same meaning as set forth in 16 V.S.A. §11(a) (5).

“Student” means, as the context requires, the student or his or her parent or guardian.

“Technical Advisory Panel (TAP),” is a panel formed by the Department of Education and is composed of state and national experts in measurement of

educational attainment. It is charged with the responsibility to ensure that Vermont's Comprehensive Assessment System is technically sound.

"Vermont Student" means an individual who is:

- (a) a resident of Vermont who is enrolled in a public or approved independent secondary school in Vermont, in the Adult Diploma Program, or in a public secondary school located in another state that is within a Vermont interstate school district; or
- (b) a resident of Vermont who is enrolled in a program of home study pursuant to 16 V.S.A. §166b; or
- (c) a non-resident of Vermont who is enrolled in a public or approved independent secondary school in Vermont which offers state assessments to its students; or
- (d) a resident of Vermont who, pursuant to an Individual Education Plan (IEP), is placed in a residential school in or outside Vermont.

"Vermont Comprehensive Assessment System" means the Comprehensive Assessment System adopted by the Vermont State Board of Education in November 1996, as amended from time to time. As used in these rules and for purposes of the Governor's Diploma only, Advanced Placement (AP) and SAT II social studies tests shall be considered to be part of the Vermont Comprehensive Assessment System.

2154 Eligibility and Opportunity to Take Examinations

Vermont students shall be eligible to receive the Governor's Diploma based on examination results from the following opportunities:

- (a) For Vermont students enrolled in Vermont public secondary schools or in independent secondary schools receiving public tuition funds, the first opportunity to take examinations leading to the award of a Governor's Diploma shall be the regular administration of the Vermont Comprehensive Assessment System examinations in English/language arts, mathematics, and science, and in the scheduled administration of SAT II and AP examinations in social studies. Other Vermont students shall be responsible for making arrangements to take the examinations as set forth in Rule 2158.3 (b). For students placed outside the school district of residence pursuant to an Individual Education Plan (IEP), opportunities to take the examinations shall be arranged, on request of the student or parent, by the district of residence.

- (b) Vermont students who have already reached the level of "achieving the standard" on any of the state assessments described in (a) of this rule may also take a regular administration of Advanced Placement (AP) and Scholastic Assessment Test II (SAT II) examinations approved by the Commissioner for purposes of determining eligibility for the Governor's Diploma with Distinction in English/language arts, mathematics, science, and social studies. Students shall notify the commissioner, on a form prepared by the Department of Education, of this intention, and shall ensure that the commissioner receives official results of the examinations.
- (c) A Vermont student shall have two opportunities to take examinations in the Vermont Comprehensive Assessment System in each of the four qualifying academic areas described in (a) of this rule, and in any additional areas approved by the commissioner in accord with Rule 2157, leading to the award of a Governor's Diploma. A Vermont student shall also have an additional two opportunities to take examinations in those four qualifying academic areas for the purposes of attempting to receive the Governor's Diploma with Distinction as described in (b) of this rule.
- (d) A Vermont student intending to take an examination a second time may do so through the regular administration of Vermont's Comprehensive Assessment System and/or through a regular administration of approved AP and SAT II examinations. Responsibility for notifying the school where the examination is to be taken within the time period announced each year by the commissioner shall rest with the student. For AP and SAT II examinations, students shall notify the commissioner, on a form prepared by the Department of Education, of this intention, and shall ensure that the commissioner receives official examination results.

2155 Examination Standards and Criteria for Award of a Governor's Diploma

- (a) A Governor's Diploma shall be awarded to a Vermont student who:
 - (i) achieves designated Framework standards in English/language arts, mathematics, science, and social studies, by receiving qualifying test scores determined by an objective panel appointed by the Commissioner for that purpose; and
 - (ii) except as provided for Adult Diploma Program students in Rule 2160, receives a high school diploma or, in the case of a home school student, is enrolled in a home study program during the last year in which the student achieves designated standards by receiving qualifying scores.
- (b) On all qualifying examinations for the Governor's Diploma, modifications, accommodations and, if available, alternate assessments shall be provided

for students as required by the student's Individualized Education Plan (IEP), Section 504 Plan, or Limited English Proficiency Plan, or for a student with disabilities without an IEP or 504 Plan. Such modifications, accommodations and alternate assessments, however, shall neither result in any diminution of the standards to be achieved nor invalidate the examination.

2156 Governor's Diploma with Distinction

A Vermont student shall qualify for a Governor's Diploma with Distinction if he or she, in addition to meeting the requirements of Rule 2155 (a):

- (a) achieves with honors designated Framework standards by receiving qualifying test scores determined by an objective panel appointed by the commissioner for that purpose in at least one of the four academic areas included in Rule 2155 (a) (i); or
- (b) achieves with honors designated Framework standards by receiving qualifying test scores determined by an objective panel appointed by the commissioner for that purpose in additional academic areas approved by the State Board of Education in accord with Rule 2157, including, but not limited to, art, music, technical fields, and foreign languages.

2157 Approval by State Board of Additional Examinations

Upon the recommendation of the commissioner, the State Board of Education may designate additional examinations in the four core academic areas, English/language arts, mathematics, science, and social studies, and in additional academic areas, including – but not limited to – art, music, foreign languages, and technical fields. Such designation may occur only after the TAP assures both its validity and reliability for this purpose and its consistency with the Framework, and provided that schools and students are notified at least one year before a new academic area is included for the Governor's Diploma.

2158 Administration of Examinations

2158.1 Responsibilities of Commissioner

- (a) By September 1, 2001 and each September 1 thereafter, the Commissioner shall inform each secondary school principal and headmaster, and the parent or guardian of each enrolled home-study student over the age of 13 of:
 - (i) the opportunity for students to obtain a Governor's Diploma,

- (ii) the schedule for administration of examinations,
 - (iii) the responsibilities of students, parents, principals, headmasters and home-study students and parents with respect to the administration of and participation in the Governor's Diploma,
 - (iv) the standards upon which student performance will be examined, and
 - (v) the criteria and method by which students shall be reimbursed for the costs of AP and SAT II examinations as provided for in Rule 2159 (b) and (c), and for other costs that may be incurred by students seeking to receive the Governor's Diploma with Distinction through examinations in additional academic areas approved under Rule 2157.
- (b) For examinations administered through the Comprehensive Assessment System (with the exception of social studies), the commissioner shall ensure the delivery of examinations to each school administering them, accompanied by clear written instructions as to:
 - (i) security of the examinations prior to, during and after administration,
 - (ii) accounting for all examinations,
 - (iii) record keeping,
 - (iv) permissible and impermissible actions by examination proctors during administration, and
 - (v) manner and timing of administration and return of the examinations.
- (c) The commissioner shall establish a system for ensuring that Vermont public secondary school principals are notified of students' examination results in relation to the qualifying test scores.
- (d) The commissioner shall establish a separate system for notifying Vermont students not attending Vermont public schools whether they meet the requirements for a Governor's Diploma. The system shall specify that it is the responsibility of the student to document for the Commissioner that he or she has received a high school diploma, and that it is the responsibility of home study students to document for the Commissioner that they have been enrolled in a home study program, as set forth in 16 V.S.A. §166b, during the year in which they receive a Governor's Diploma.

- (e) The commissioner shall establish and oversee a timely, fair and efficient method for reviewing, on request, the test scores of a student who does not achieve the standards or achieve the standards with honors described in Rule 2155 (a) (i) and Rule 2156 (a) and (b). Such requests for review shall be made in writing within 30 days of receiving the scores. The commissioner's decision shall be final.
- (f) Students who miss an examination that is part of the Comprehensive Assessment System due to unavoidable circumstances, such as, but not limited to, a verified short term medical illness, chronic condition, or family emergency, shall be permitted to request special arrangements through the commissioner for an additional testing opportunity.

2158.2 Responsibilities of School Officials

- (a) The principal or headmaster of a secondary school administering the examinations, or his or her designee, shall be responsible for:
 - (i) Notifying in a timely manner all eligible students, as described in Rule 2154, of the examination schedule,
 - (ii) security of the examinations before, during, and after administration,
 - (iii) ensuring the administration of the examination in a manner consistent with the Commissioner's instructions,
 - (iv) assigning appropriate staff to administer the examinations,
 - (v) ensuring staff administering the examinations are trained in accord with specific test protocols,
 - (vi) requiring staff to sign an assurance after administration of the examination to the effect that it was administered in accord with specific test protocols, law, these rules and the instructions issued by the commissioner, and
 - (vii) creating and maintaining records of the administration of the examinations which, at minimum, shall include:
 - (A) the names of the students who took the examination,
 - (B) the names of the students who completed the examination,
 - (C) the date the examination was administered,

- (D) the assurance described in subdivision (a)(vi) above, and
- (E) a description and explanation of any irregularities that may have occurred during the administration of the examination,
- (viii) notifying students and parents of the examination results and the method and timing for requesting a review of scores by the commissioner,
- (ix) informing the commissioner by May 1 of each year of those students who may meet the requirements for an award of a Governor's Diploma,
- (x) ensuring that students who receive a Governor's Diploma are publicly recognized at the school's graduation ceremony if the examination results are known, and
- (xi) providing a final list to the Commissioner, by September 1 of each year, of those students who have received a Governor's Diploma.

2158.3 Where the Examinations are to be Administered

- (a) If a student is enrolled in a Vermont school that administers the examinations, or in a public secondary school located in another state that is within a Vermont interstate school district that administers examinations, the student shall take the examination at that school. Students enrolled in technical centers may take examinations at the center if the center administers them, or at their sending school.
- (b) If the student is enrolled in a home study program or is enrolled in an independent school in Vermont or outside Vermont, or in a public school outside Vermont that does not administer the examinations, the student may take the examinations at any Vermont site that administers them. The student or the student's parent or guardian shall be responsible for making the arrangements by October 1st of the school year during which testing will be done.
- (c) If a student is placed outside the school district of residence pursuant to an Individualized Education Plan, the school district shall arrange for the administration of the examinations.
- (d) In accord with Rule 2160, students enrolled in the Adult Diploma Program may take examinations through regular or special administrations of assessments in the Comprehensive Assessment System and regular administration of SAT II and AP tests.

2159 Payment of Examination Costs

- (a) For examinations within the Comprehensive Assessment System, the commissioner shall pay the costs of the first and second administration of the examinations for Vermont students. For those students who have achieved the standard on examinations in the Comprehensive Assessment System, and who intend to seek the diploma with distinction in accord with Rule 2154 (b), commissioner shall pay the costs of up to two additional administrations. Costs shall include those for administration, scoring and reporting of scores.
- (b) For up to two administrations of AP and SAT II examinations taken for the purpose of attaining the Governor's Diploma with Distinction in each of the areas of English/language arts, mathematics, science, and social studies in accord with Rule 2154 (b) and (c) the commissioner shall reimburse costs for students who meet federal criteria for eligibility for free and reduced price lunches. The commissioner shall include information about the reimbursement system in the material distributed in accord with Rule 2158.1 (a) (v).
- (c) If the commissioner approves examinations in additional academic areas under Rule 2157, he or she shall pay the costs of two administrations for students who meet federal criteria for eligibility for free and reduced price lunches. The commissioner shall include such provisions in the material distributed in accord with Rule 2158.1 (a) (v).

2160 Adult Diploma Students

Any student enrolled in the Adult Diploma Program shall be eligible for the opportunity to achieve the Governor's Diploma. The commissioner shall ensure that such students shall be notified of the opportunity to take examinations through regular or special administrations of assessments in the Comprehensive Assessment System and regular administration of SAT II and AP tests.

Students who intend to take examinations a second time up to one year after receiving their high school diploma, having been notified by the Adult Diploma program of this opportunity pursuant to Rule 2154 (c), shall inform the commissioner of their intention. The commissioner shall ensure that such students shall have the opportunity to take the examinations. The accommodations and payment provisions of Rules 2155 (b) and 2159 shall apply to Adult Diploma students.

2161 Effective Date of Rules and of the Governor's Diploma

These rules shall be effective on September 10, 2001. The first year students shall be eligible to receive the Governor's Diploma shall be in school year 2002-2003.

2194 Educational Support System

Effective: 9/17/07

In accordance with 16 V.S.A. §2902 and Rule 2120.8.3 of the School Quality Standards:

- (a) Each school shall ensure that a comprehensive system of support services is in place, including an Educational Support Team, to assist all students in working toward attainment of the Vermont Framework standards or comparable standards.
- (b) Each school's comprehensive system of support services shall:
 - (1) Increase the ability of the general education system to meet the needs of all students, including those who require additional assistance in order to succeed or be challenged,
 - (2) Be integrated with the general education curriculum,
 - (3) Provide a range of support and remedial services, including instructional and behavioral interventions and accommodations,
 - (4) Provide needed student support regardless of eligibility for categorical programs, and
 - (5) Involve families, community supports and the system of health and human services.
- (c) Each school's comprehensive system of support services shall be designed to prevent or mitigate factors which may interfere with student learning, and to ensure that students receive the specialized or intensive support they may require to work toward attainment of the standards contained in the Framework or comparable standards.

8/16/2001

2195 Grant Applications for Inservice Training Funds

(1) On April 15th of each fiscal year through fiscal year 1995, the Commissioner shall solicit applications for in-service training funds for the training of teachers and administrators in the identification and evaluation, and provision of educational services to students who require classroom supports.

- (1) Applications must be filed by May 15th on a form prescribed by the commissioner.
- (2) In distributing these in-service training funds, preference will be given to those districts which demonstrate the greatest need. The following factors may be considered in determining greatest need:
 - (a) the percentage of students in special education;
 - (b) the percentage of students receiving special education outside of the regular classroom environment;
 - (c) the degree of the school restructuring activities being proposed;
 - (d) the extent to which the proposed training will result in lasting change to the school system;
 - (e) the unique training requirements based on staff turnover, staff shortages or the training needs of the staff; and
 - (f) a high student to staff ratio.

8/16/2001

2200 EVALUATION OF PRIVATE EDUCATION PROGRAMS

2210 (vacant)

INDEPENDENT SCHOOL PROGRAM APPROVAL

2220 Approval of Independent Elementary and Secondary Schools

Statement of Purpose

The purpose of independent school approval rules is to assure acceptable educational opportunities for students enrolled in Vermont's independent schools.

2221 Statutory Authority: 16 VSA §166 and 16 VSA §2958(e)

2222 Procedure

Every person or entity desiring to operate an approved independent elementary or secondary school shall apply in writing to the Commissioner of Education. Independent schools which are recognized as provided for in 16 VSA §165a rather than approved are not required to comply with the procedures set forth in this section. An application shall meet the requirements of 2225 below.

Upon receipt of an application for initial approval or renewal of approval, the commissioner shall appoint a review committee of at least two persons.

The process below (2222.1 to 2222.7) shall be followed.

2222.1 Visit. The review committee shall visit the school. To the extent possible, the visit shall be coordinated by the commissioner with other agencies of state government which inspect such facilities.

2222.2 Report. The committee shall present a written recommendation regarding approval to the commissioner. A copy of their recommendation shall be provided at the same time to the applicant. The applicant shall be given 30 days to respond before a recommendation regarding approval is made by the commissioner to the state board. The report shall contain the findings of other agencies of state government which inspect such facilities.

2222.3 Review. The commissioner shall designate a date for action by the board. Officials of the school shall be notified of this date.

2222.4 Renewal. Not less than six months prior to expiration of a school's approval, the commissioner shall send an application packet and a letter notifying the school when the site visit will occur and that the completed application must be received from the school not later than 30 days prior to the scheduled site visit.

- 2222.5 Extension. Approval of a school completing timely application for further approval shall extend until the board acts on further approval.
- 2222.6 Termination. Approval of an independent school which fails to complete timely application for further approval shall terminate on the date specified in the most recent approval action.
- 2222.7 Denial, Revocation or Suspension of Approval.
Prior to recommending denial, revocation or suspension of approval, the commissioner shall obtain the written recommendation of the Council of Independent Schools. If after receiving the Council's recommendation the commissioner determines that denial, revocation or suspension of approval is warranted, s/he shall notify the school of the reasons for the proposed action and shall afford the school an opportunity to be heard by the board. Approval of an independent school shall be revoked or suspended by the board based on a finding that the school no longer meets the criteria for approval listed in Section 2226.
- 2222.8 Investigations. Reports or complaints to the commissioner concerning matters related to the approval standards shall be investigated if it appears such action is warranted. The school shall receive notification of the complaint unless contraindicated by the particular facts. A review team of at least two persons shall be appointed by the commissioner including a member of the Council of Independent Schools. The team will conduct the investigation after initial inquiries and will inform the school of the results. Reports of drug or alcohol use shall be referred to the state's attorney for the county in which the school is located. Reports of child abuse or neglect shall be reported to the Department of Social and Rehabilitation Services. Reports concerning the safety of facilities, water supply, electricity, plumbing or waste disposal systems shall be referred by the department to the appropriate public agency.

2223 Reciprocity

Approval may be granted without committee evaluation and the approval process in the case of any school accredited by a state or regional agency recognized by the State Board for accrediting purposes. Such accrediting agencies are listed in Rule 7320 of the board Manual of Rules and Practices. Any accreditation from a recognized accrediting agency that is valid for more than five years must be supplemented with an interim report from the accrediting agency which should be submitted to the Department of Education by the accrediting agency or the school during the last year of its five-year approval. This interim report must provide such information as is necessary to assure the State Board that the school is meeting the approval standards. If such proof of compliance with approval standards cannot be shown, the school must undergo the approval process.

2224 Tuition from Public Funds

2224.1 Tuition may not be paid from public funds to any elementary or secondary school not approved by the board.

2224.2 Tuition for Independent Schools

Tuition shall not be paid from public funds to any independent elementary or secondary school in Vermont for any Vermont student who has been determined eligible for special education unless:

- (a) the school is approved for special education purposes pursuant to Rule 2228 et seq.; or
- (b) there is an order from a court or from a due process hearing pursuant to Rule 2364.3.5 requiring such payment.

2224.3 In order for tuition to be paid to an independent school in another state, the school must be accredited or approved by the host state or by an accrediting agency recognized by the state board. The state board reserves the right to refuse payment of tuition, if after review it determines any such school does not provide the minimum course of study, is unsafe, or does not have faculty qualified by training and experience in the instructional area in which they are assigned.

2225 Application

An application for initial approval or renewal of approval shall contain the following:

2225.1 The name and address of the school.

2225.2 A statement of the school's philosophy and purpose.

2225.3 A description of the school enrollment including a statement of whether it is designed to serve children with a particular disability or with disabilities generally.

2225.4 A description of the plan of organization for the school including its governance, faculty, and student body, and the names and addresses of the governing board.

2225.5 A description of the curriculum, methods of instruction, evaluation procedures and special services which the school has designed to achieve its educational objectives and to provide a minimum course of study as defined in 16 VSA §906.

2225.6 A description of physical facilities including plant, materials and equipment and assurances that the facilities meet all applicable state and federal requirements.

2225.7 Evidence of compliance with local, state and federal requirements pertaining to the health and safety of pupils.

2225.8 Statements regarding professional staff including:

2225.8.1 Professional Staff Qualifications

- (1) A job description for each position or a statement describing training, experience and degree(s) required for each position.
- (2) A resume, vita or description of appropriate qualifications for each current professional staff member.
- (3) Current assignment of each professional staff member.

2225.8.2 Professional Staff Development

- (1) A general statement of the institution's expectations for professional growth of staff.
- (2) A statement describing the school's inservice training and financial and other support given to staff for professional development; and
- (3) A description of professional development in the prior two years.

2225.8.3 Professional Environment

- (1) A list of staff and length of service.
- (2) A description of staff meetings.
- (3) A description of other staff duties that are not related to teaching or administration duties.

2225.9 Evidence of financial capacity may be shown by one of the following:

- (1) An audit letter by a certified accounting firm from the present or prior year describing financial capacity;
- (2) A notarized letter summarizing the financial status within the present or prior fiscal year signed by the board of directors or governing body;
- (3) An audit from the present or prior fiscal year performed by a certified accounting firm; or
- (4) A statement of financial capacity of a private, state, or regional agency recognized by the state board for accrediting purposes concerning the school's financial capacity.

2225.10 The school calendar.

2225.11 Copies of publications for distribution to applicants for admission including the statement required by 16 VSA §166 (b) (3).

2226 Approval

The board may approve an independent school if it finds that:

2226.1 The description of the school in the approval application is accurate.

2226.2 The course of study offered is adequate to meet the educational purposes of the school and to provide a minimum course of study that is age and ability appropriate.

2226.3 The school has available support services necessary to meet the requirements of a minimum course of study and its educational purposes, including but not limited to library sciences, administrative services, guidance and counseling services and a system of records by which pupil progress may be assessed.

2226.4 The school has classroom, laboratory, library and other facilities necessary to operate its program.

2226.5 The school employs professional staff who are qualified by training and experience in the areas in which they are assigned as measured by the following:

2226.5.1 For teachers, a minimum of a bachelor's degree in their field of instruction or substantially equivalent time in training and experience in their field of instruction.

2226.5.2 For all professional staff, relevant experience and/or training in other programs not related to teaching or administrative duties to which they are assigned.

2226.6 The school has an adequate program of continuing professional staff development as demonstrated in the application.

2226.7 The school employs a sufficient number of professional staff of the population served.

2226.8 The school satisfies lawful requirements relative to its facilities, fire drills, and the immunization of its pupils against disease.

2226.9 The school maintains a register of the daily attendance of each of its pupils and meets the requirements of law regarding the reporting of its enrollment.

2226.10 The school maintains an operating schedule that includes a total number of instructional hours each year which is not less than that required of a public school serving the same grades.

2226.11 The school has the financial capacity to carry out its educational purpose for the period of approval.

2227 Length of Approval

The board may grant initial approval for a period of not more than two years, and renewal of approval for not more than five years.

2228 Special Education Approval of Independent Schools

2228.1 (1) In order for an in-state independent school to receive approval for purposes of Rules 2224.2 and 2228.2 and 16 VSA §2958 (e), it must obtain general independent school approval pursuant to Rule 2200, and also receive approval for special education purposes from the State Board of Education after a determination that its staff, programs and facilities meet state and federal special education standards.

(2) Limitation of Special Education Approval

Each special education approval may be limited to one or more categories of disability, as defined in Rule 2362.1, according to the services the school provides.

(3) Out-of-state Programs

Unless otherwise determined by the Vermont State Board of Education, in order for an out-of-state independent school to be approved for special education purposes by the Vermont State Board of Education, it must be approved by the host state for the purpose of providing special education and related services to children with disabilities within that state. Any limitation by the host state on an independent school's special education approval, such as by category of disability served, or other comparable standard, shall also apply to the school's special education approval in Vermont.

2228.2 (1) Placement Prohibition

No responsible agency, as defined by Rule 2360.2 shall make a special education placement in an independent school that has not been approved for special education purposes unless the placement is pursuant to:

- (a) a subsection (2) of this rule,

- (b) a court order, or
- (c) a due process order pursuant to Rule 2364.3.5.

Nor shall such placement be made in an independent school that serves special education students who are in a category of disability different from that under which the student was determined to be eligible for special education.

(2) Exceptional Circumstances – Approval Process

Upon application by a responsible agency, the commissioner may permit, in exceptional circumstances, a special education placement in an independent school that is approved pursuant to Rule 2200 but has not received approval for special education purposes pursuant to Rule 2228.1, Rule 2366.2.2(7) notwithstanding, in instances in which the commissioner grants such approval, tuition and associated otherwise allowable costs shall be reimbursable under subchapter 2 of Chapter 101 of Title 16 of the Vermont Statutes Annotated. Any person aggrieved by the commissioner's decision may file an appeal with the State Board of Education pursuant to 16 VSA §828.

- (a) Exceptional circumstances exist when:
 - (i) after reasonable efforts, the LEA cannot locate an appropriate public or independent school approved for special education purposes pursuant to Rule 2228.1 to serve students with the category of disability under which the student was determined to be eligible for special education; and
 - (ii) the proposed placement is deemed appropriate by the student's IEP team.
- (b) The commissioner may specify conditions under which the placement is to be carried out.

2228.3 In order to obtain special education approval, an independent school shall meet standards that apply to state and local education agencies. This shall be evidenced by the maintenance and implementation of written policies or procedures, as appropriate, in at least the following areas:

- (1) admissions;
- (2) least restrictive environment;

- (3) discipline;
- (4) graduation;
- (5) faculty qualifications; and
- (6) faculty-student ratios, including ratios that meet the Vermont School Quality Standards for the direct provision of special education and related services or consultation regarding the provision of special education and related services to publicly-placed students on IEPs.

2228.3.1 In order to obtain special education approval, an independent school shall coordinate with sending responsible agencies, parents, public agencies and other service providers serving a student by:

- (1) maintaining educational records and disclosing them to the sending responsible agency and the student's parents;
- (2) participating in evaluation procedures and in the development of IEPs, including plans for reintegration and transition services;
- (3) implementing IEPs; and
- (4) providing prior notice to the sending LEA regarding the need for a change in a student's program or placement, including long-term suspension or expulsion.

These practices shall be evidenced by the maintenance and implementation of written policies or procedures, as appropriate.

2228.3.2 An independent school shall satisfy the state licensure requirements for personnel who are responsible for the provision or supervision of special education and related services.

2228.4 Written Agreements Required

2228.4.1 Agreement as to Costs

In order to obtain special education approval, an independent school shall assure the State Board of Education that prior to enrolling a publicly-placed student who is served pursuant to an IEP, it will enter into a written agreement with the sending responsible agency that outlines tuition, room, board and other costs associated with the student's attendance. For students on an IEP who are placed by a state agency or a designated community mental health agency, or any other agency defined by the commissioner, in accordance with 16 VSA §2948, the agreement shall be

with the Commissioner of Education. In the instance of an emergency placement, such provisions may be agreed upon within thirty days of the student's enrollment.

2228.4.2 Agreement as to Non-instructional Services

In order to obtain special education approval, an independent school shall assure the State Board of Education that within thirty days of enrolling a publicly-placed student who is served pursuant to an IEP, it will enter into written agreement with the sending responsible agency as to the division of responsibility for performance of non-instructional services, including compliance with special education procedural requirements. For students placed by a state agency or a designated community mental health agency, or another agency defined by the commissioner, this agreement shall be with the local educational agency that has educational planning responsibility for the student.

2228.5 Special Education Approval Procedures

- (1) Application for special education approval shall be made at the time of application under rule 2200. An independent school that has already obtained independent school approval from the State Board of Education, may at any time submit an application for special education approval to the commissioner.
- (2) Application for special education approval shall be submitted in writing to the commissioner in accordance with the format prescribed by the commissioner.
- (3) The procedures for special education approval shall be the same as those for approval in accordance with rules 2222.1 through 2222.7. To the extent possible, these procedures shall occur simultaneously.

2228.6 After receiving approval for special education purposes, an independent school shall notify the commissioner of any significant changes to its special education program, professional staff, governance, financial capacity or facilities. The commissioner may, upon such notification, gather additional information from the school, including by means of a site visit. As a result, the commissioner may return to the state board for a change in the school's approval for special education purposes. If the commissioner petitions the state board for a change to an independent school's approval for special education purposes, the Council of Independent Schools and the subject independent school shall be notified and have an opportunity to be heard by the State Board. If the school disagrees with the proposed change to its approval for special education purposes, the Board shall hear the matter in accordance with the requirements of rule 1230, et seq.

2228.7 Independent schools that are approved for special education purposes shall be deemed to offer a minimum standard of service to a student, as required by 16 VSA §2973, if those services are offered according to a written agreement with the sending responsible agency, as required by Rule 2228.4.

2228.8 Rate Approval for Independent Schools Approved for Special Education Purposes

- (1) Each independent school approved for special education purposes by the State Board of Education shall annually report its rates for special education tuition, related services and room and board to the commissioner on a form prescribed for that purpose.
- (2) The rates that an independent facility approved for special education purposes charges for tuition, related services and room and board shall be no more than the costs that are reasonably related to the level of services provided to its publicly-placed special education students. Reasonable relationship shall be determined by utilizing generally accepted accounting principles, such as those set forth in the Handbook (II) for Financial Accounting of Vermont School Systems.
- (3) The commissioner shall review each special education approved independent school's annual rate report. If the commissioner concludes that a special education approved independent school's rates are not reasonably related to the level of services provided to publicly-placed special education students, the commissioner shall make a determination as to the maximum rate that public schools and the State Department of Education would pay to the independent school for those services and offer the school an opportunity for explanation regarding why the maximum rate the Department would pay is not adequate. If the explanation is not satisfactory to the commissioner, he or she shall notify the Council for Independent Schools and shall refer the matter to the State Board of Education.
 - (a) Upon such referral by the commissioner, the board shall conduct a formal proceeding in accordance with the requirements of rule 1230, et seq.
 - (b) The State Board's determination shall be final.
- (4) Time lines for rate approvals from the Department
 - (a) To have a new rate approved for the ensuing school year, an independent school shall submit a request for rate approval with supporting documentation to the Department prior to November 15. The commissioner shall notify the independent school of the results of the review on or before January 15.

- (b) If a request for a new rate approval is not submitted by November 15, the most recent approved rate will be in effect until the following November 15, when the next rate request is due.

2228.9 Standards and Regulations

The Vermont State Board of Education shall afford the opportunity for approved independent schools to participate in the development and revision of state standards that apply to independent schools.

2229 Corrections Education Program

To the extent applicable, the commissioner shall conduct his or her review of the Corrections Education Program in accordance with the procedures and standards contained within rules 2220 through 2228.8 as if it were an independent school.

2230 Approval of Tutorial Programs: Statutory Authority 16 VSA §828

2230.1 “Tutorial program” means education provided to a pupil who is placed in a short-term program that is not administered by a school district. The purpose of the program is to provide evaluation and/or treatment. This does not include home based tutorials, programs operated by a public school or collaborative, or a program of an independent school that has been approved under 16 VSA §166. The average length of stay for students in a tutorial program shall be not more than six months. The commissioner may waive the average length of stay time period for individual programs, based upon needs of the students served by the program.

2230.2 Procedures for Approval

2230.2.1 Application shall include the following:

- (a) name, address, telephone number of the tutorial program,
- (b) name of the Chief Executive Officer or contact person,
- (c) a statement of the tutorial program’s purpose and objectives
- (d) a description of the tutorial program enrollment including a statement of who it is designed to serve,
- (e) a description of the plan of organization for the tutorial program, and
- (f) a tutorial program calendar.

2230.2.2 Review

Upon receipt of an application for approval, the commissioner shall appoint a committee of at least two persons to review the application and visit the tutorial program.

2230.2.3 Report to the Commissioner

The appointed committee shall present a written recommendation regarding possible approval to the commissioner. A copy of the recommendation shall be sent to the tutorial program. The applicant shall be given at least 30 days to respond before a recommendation regarding approval or disapproval is made by the commissioner to the State Board of Education.

2230.2.4 Board Action

The Commissioner shall recommend approval or disapproval for action by the State Board at their next meeting. Officials of the tutorial program shall be notified of this meeting date.

2230.2.5 Term of Approval

The State Board may grant approval for a term of not more than two years. The tutorial program must be approved prior to receiving tuition payments from a public school district.

2230.2.6 Renewal

Not less than three months prior to expiration of a tutorial program's approval, the commissioner shall send an application packet and a letter notifying the program when the site visit will occur. The completed application must be received from the tutorial program not later than 30 days prior to the scheduled site visit.

2230.2.7 Denial, Revocation or Suspension of Approval

Prior to recommending denial, revocation or suspension of approval to the State Board of Education, the commissioner shall notify the tutorial program of the reasons for the proposed action and shall afford the tutorial program an opportunity to be heard by the Board. Approval of a tutorial program shall be revoked or suspended by the board based on a finding that the tutorial program no longer meets the criteria for approval.

2230.2.8 Standards and Regulations

The Vermont State Board of Education shall afford the opportunity for approved tutorial programs to participate in the development and revision of state standards that apply to tutorial programs.

2230.3 Criteria for Approval

In order for a tutorial program to obtain approval from the State Board of Education, the program shall meet both the general and special education requirements in the following areas:

2230.3.1 The instruction and methods of instruction offered are age and ability appropriate for the student, and are coordinated with the student's responsible school district as set forth in Rule 2230.3.10 below.

2230.3.2 The tutorial program has sufficient facilities and materials or access to other facilities and additional materials as necessary to provide an appropriate education.

2230.3.3 The tutorial program's facilities and operation comply with local, state and federal requirements pertaining to the health and safety of students.

2230.3.4 The tutorial program employs an adequate number of professional staff for the population served and these staff members are qualified by training and experience in the areas in which they are assigned.

2230.3.5 Teachers providing or supervising the provision of special education have licensure and endorsement as would be required for the equivalent work in a Vermont public school.

2230.3.6 All professional staff has relevant experience and/or training in the duties to which they are assigned.

2230.3.7 The tutorial program maintains a register of the daily attendance of each of its pupils and reports the attendance to the responsible school district.

2230.3.8 The tutorial program maintains an operating schedule that includes instruction for no less than ten hours per week unless inconsistent with medical and/or educational recommendations. The operating schedule must be sufficient to ensure that the instructional services address the individual needs of a student with disabilities and are consistent with the student's IEP.

2230.3.9 The tutorial program has the financial capacity to carry out its educational purposes for the period of approval.

2230.3.10 The tutorial program coordinates educational services with the responsible school district, including credit for coursework for high school and coordinates with other responsible agencies such as Social and Rehabilitative Services, Community Mental Health Centers, and Family-Parent Child Centers by:

2230.3.10.1 Contacting the responsible school district(s) (see 16 VSA §1075) in order to access school records and determine the special education status of the student;

2230.3.10.2 Reviewing the IEP, the student's needs and its own ability to implement the IEP;

2230.3.10.3 Making a formal referral for a special education evaluation to the responsible school district, if when receiving a student, he/she is suspected of having a disability;

2230.3.10.4 Maintaining educational records and disclosing them to the responsible school district and the student's parents, unless restricted by statute, court order or other legally binding document specifically revoking those rights;

2230.3.10.5 Participating in evaluation procedures and in the development of IEPs, including plans for reintegration and transition services;

2230.3.10.6 Implementing IEPs; and

2230.3.10.7 Providing prior notice to the responsible school district regarding the need for a change in a student's program or placement, including long-term suspension or expulsion.

2230.3.11 In order to obtain approval, a tutorial program shall meet special education standards that apply to state and local education agencies. This shall be evidenced by the maintenance and implementation of written policies or procedures, as appropriate, in at least the following areas:

(1) admissions,

(2) discipline, and

- (3) significant change in placement.

2230.4 Rate Approval for Tutorial Programs

2230.4.1 Each tutorial program shall annually report its rates for tuition, related services and room and board, if applicable, to the commissioner on a form prescribed for that purpose.

2230.4.2 The rates that a tutorial program charges for tuition, related services and room and board shall be reasonably related to the actual costs of the services provided. Reasonable relationship shall be determined by utilizing generally accepted accounting principles, such as those set forth in the Handbook (II) for Financial Accounting of Vermont School Systems.

2230.4.3 The commissioner shall review each tutorial program's annual rate report. If the commissioner concludes that a tutorial program's rates are not reasonably related to the services provided, the commissioner shall make a determination as to the maximum rate that public schools and the State Department of Education would pay to the tutorial program for those services and offer the tutorial program an opportunity for explanation regarding why the maximum rate the Department would pay is not adequate. If the explanation is not satisfactory, the commissioner shall refer the matter to the State Board of Education.

2230.4.3.1 Upon such referral by the commissioner, the State Board of Education shall conduct a formal proceeding in accordance with the requirements of Rule 1230, et seq.

2230.4.3.2 The State Board of Education's determination shall be final.

2231 DISTANCE LEARNING SCHOOLS

2231 Approval of Distance Learning Schools

2232 Statutory Authority: 16 VSA Section 166 (b) (6)

2233 Definition

A “Distance Learning School” means an independent school which offers a program of elementary or secondary education through correspondence, electronic mail, satellite communication or other means and which, because of its structure, does not meet some or all the rules of the State Board for approved independent schools.

2234 Procedures and standards

The distance learning school shall meet the procedures and standards set forth in rules 2220-2227, above, which because of its structure can be applied, and the following rules:

2234.1 The distance learning school’s business and administrative offices are located in Vermont and are sufficient to meet the needs of the school.

2234.2 The distance learning school follows Vermont requirements for incorporation pursuant to Titles 11, 11A, and 11B of Vermont Statutes Annotated.

2234.3 The distance learning school offers an educational program which is developed and assessed by staff who are other than the parent of the students and who are either employed by the school or under contract with the school.

2234.4 The distance learning school has policies and procedures to:

- (1) Enroll students who reasonably can be expected to benefit from the instruction offered by the program, and
- (2) Measure student progress to ensure that students continue to benefit from such instruction.

2234.5 The distance learning school has policies and procedures to answer student and parent inquiries about programs and services promptly and satisfactorily and to answer specific student academic inquiries in a timely and beneficial way.

2234.6 The distance learning school has policies and procedures for informing students and parents of academic progress on a regular basis.

2234.7 Tuition

2234.7.1 Tuition policies, including tuition collection practices, are written, clear, and provided to parents in advance of enrollment.

2234.7.2 The distance learning school has clear written policies on refunds of tuition payments for circumstances in which students choose not to or are unable to complete the program of instruction.

2234.8 In the event that the school closes, the distance learning school has policies for:

- (1) tuition adjustment or refund, and
- (2) Preservation and release of student records.

2240 POST-SECONDARY SCHOOLS

August 1991

2240 Certification of Post-Secondary Schools

2240.1 Definitions

2240.1.1 “Post-secondary school” means any person who offers or operates a program of college or professional education for credit or degree. Significant changes to an existing post-secondary school such as changing from an associate to an undergraduate degree program, or adding a new graduate degree program shall be considered the operation of a post-secondary school for the purposes of registration and certification.

2240.1.2 “A post-secondary school whose primary operation is in the State of Vermont” means a post-secondary school which offers the majority of its courses in an institution in Vermont or which maintains its principal administrative offices in Vermont and offers post-secondary courses in Vermont.

2240.1.3 “Confer a degree” and “degree-granting authority”, for the purposes of these rules, mean the act of conferring and the authority to confer a degree to a student who has completed the requisite coursework and other requirements in a post-secondary school doing business in Vermont. An out-of-state post-secondary school which offers more than seventy-five percent of its credit hours toward a degree in its Vermont affiliate must obtain a certificate of degree-granting authority in Vermont before it may confer or offer to confer a degree.

2240.1.4 “Business organization” for the purposes of 16 VSA §176 (d) (1), may include a corporation if the program of education is provided solely for the employees or invitees of the corporation.

2241 Certification of Vermont-Based Post-Secondary Schools

2241.1 Statutory Authority: 16 VSA §176

2241.2 Registration

Any person who desires to operate a post-secondary school in Vermont, which shall have its primary operation in Vermont, shall file with the commissioner prior to commencing operation a statement of intent to operate which shall include the following information:

- (a) Name, location and legal nature of the school including affiliations with other organizations, if any.
- (b) Name and title of the chief administrative official.
- (c) Operating calendar of the school.
- (d) A concise description of the program(s) to be offered.
- (e) A description of the proposed student body including a projection of the size and level of education at admission.
- (f) After July 1, 1991, assurance that each applicant for enrollment is notified, in writing, on an application, enrollment or registration form to be signed by the applicant, that credits earned at the school are transferable only at the discretion of the receiving school.
- (g) If the school is to offer credit or degree by correspondence, proof of a correspondence license.
- (h) A notice to applicants for enrollment that the school does not possess degree-granting authority.

2241.3 Application for Certification of Approval

A person desiring a certificate of approval from the State Board of Education shall file an application with the commissioner within eighteen months after admitting the first student. A person may file an application for a certification of degree granting authority at any time but may not operate beyond eighteen months after admitting the first student unless an application for a certificate of approval has been filed. The application shall indicate the certification sought and shall include a description of the school which contains the following:

- (a) The name, location and legal nature of the school including a copy of the articles of association or other documents descriptive of the legal nature of the school.
- (b) The credits or degree(s) which the school proposes to offer.
- (c) The time schedule by which the school intends to implement the program for which certification is sought.
- (d) The purpose and philosophy of education of the school.

- (e) The organization of the school including a description of its governance, administration and affiliation with other organizations for the provision of services or programs.
- (f) A description of the financial resources and policies of the school, including its present and anticipated future assets, sources of funding and revenue, start-up costs for proposed programs and operating budget. Assets and income and expenditures for the school's prior fiscal year shall be presented in an audited financial statement prepared by a certified public accountant.
- (g) The school's policy regarding refund of tuition and fees collected in advance from students.
- (h) A description of the school's plant, library and equipment.
- (i) A description of academic programs including their level, site and length. The application shall set forth, if any, the minimum credit requirements.
- (j) A statement regarding the school's professional staff including its policy regarding appointment, promotion, tenure, if applicable, dismissal, the qualifications of professional staff, teaching and student loads, and the numbers of full-time and part-time and adjunct staff and their non-teaching responsibilities.
- (k) A description of the student body including its size and level of education at admission, methods of recruitment, and available financial aid resources.
- (l) A copy of all catalogues or brochures publicly distributed by the school and a copy of advertisements sponsored by the school to recruit students or solicit funds.
- (m) If the school is to offer credit or degree(s) by correspondence, proof of a correspondence license.
- (n) After July 1, 1991, evidence that each applicant for enrollment is notified, in writing, on an application, enrollment or registration form to be signed by the applicant, that credits earned at the school are transferable only at the discretion of the receiving school.

2242 Certification of Post-Secondary Schools Doing Business in Vermont Whose Primary Operation Lies Outside of Vermont

2242.1 Statutory Authority: 16 VSA §176a

2242.2 Application for Certification of Approval

A person desiring a certificate of approval from the State Board shall file an application with the Commissioner prior to admitting students. A person may file an application for a certification of degree granting authority at any time but may not admit students without having received a certification of approval and may not confer or offer to confer a degree without having received a certificate of degree granting authority unless exempt under rule 2240.1.3. The application shall indicate the certificate sought and shall include a description of the school which contains the following:

- (a) The name, location and legal nature of the school including a copy of articles of association or other documents descriptive of the legal nature of the school.
- (b) The credits or degree(s) which the school proposes to offer.
- (c) The time schedule by which the school intends to implement the program for which certification is sought.
- (d) The purpose and philosophy of education of the school.
- (e) The organization of the school, including a description of its governance, administration and affiliation with other organizations for the provision of services or programs.
- (f) A description of the financial resources of the school, including its present and anticipated future assets, sources of funding and revenue, start-up costs for proposed programs and operating budget. Assets and income and expenditures for the out-of-state school's prior fiscal year shall be presented in an audited, financial statement prepared by a certified public accountant.
- (g) The school's policy regarding refund of tuition and fees collected in advance from students.
- (h) A description of the school's plant, library and equipment.
- (i) A description of academic programs including their level, site and length. The application shall set forth, if any, the minimum credit requirements.
- (j) A statement regarding the school's professional staff including its policy regarding appointment, promotion, tenure, if applicable,

dismissal, the qualifications of professional staff, teaching and student loads, and the numbers of full-time and part-time and adjunct staff and their non-teaching responsibilities.

- (k) A description of the student body including its size and level of education at admission, methods of recruitment and available financial aid resources.
- (l) A copy of all catalogues or brochures publicly distributed by the school and a copy of advertisements sponsored by the school to recruit students or solicit funds.
- (m) If the school is to offer credits or degree(s) by correspondence, proof of application for a correspondence license.
- (n) After July 1, 1991, evidence that each applicant for enrollment is notified, in writing, on an application, enrollment or registration form to be signed by the applicant, that credits earned at the school are transferable only at the discretion of the receiving school.
- (o) A statement of commitment to offer the full program for students to complete the program in a reasonable length of time.
- (p) If the school is accredited, documentation of accreditation.

2243 Review Process-Schools Chartered In and Out of Vermont

2243.1 Review of Application for Certificate of Approval

Upon receipt of an application for certificate of approval, the Commissioner shall appoint a review team of no fewer than two individuals. The commissioner shall appoint persons to the review team who possess general knowledge of post-secondary school standards and, where applicable, persons with specialized knowledge in any particular programs offered by the school. At least one of the persons so appointed shall be from a Vermont post-secondary school or representative organization. The team shall review the application and shall verify its contents, if necessary, by visiting the school. The team shall present written recommendation regarding certification to the Commissioner within 90 days of the receipt of the completed application unless a longer period is required and explained in writing to the applicant. A copy of this recommendation shall be provided at the same time to the applicant. The applicant shall be given 30 days to respond, and if requested, shall be afforded a hearing before the Commissioner or his or her designee before a recommendation regarding certification is made by the Commissioner to the State Board.

2243.2 Application for Certificate of Degree Granting Authority

Upon receipt of an application for degree granting authority, which shall contain all the information required by an application for certification of approval and information documenting that the requirements of rule 2243.6.1 are met, the commissioner shall contact the Vermont Higher Education Council which shall review the application and determine the accuracy of its contents, if necessary, by visiting the school. The Commissioner may also appoint independent reviewers to accompany representatives of the Higher Education Council reviewing the school. The Higher Education Council shall present written recommendations regarding certification to the Commissioner within 90 days of the receipt of the completed application unless a longer period is required and explained in writing to the applicant. The independent reviewers, if appointed by the Commissioner, may either join in the recommendations of the Higher Education Council or present independent recommendations. A copy of all recommendations shall be provided to the applicant at the same time they are provided to the Commissioner. The applicant shall be given 30 days to respond to the recommendations and, if requested, shall be afforded a hearing before the Commissioner or his or her designee before a recommendation regarding certification is made by the Commissioner to the State Board. The State Board shall be provided with a copy of the recommendation of the Higher Education Council and, if applicable, a copy of the recommendations of the independent reviewers.

2243.3 Renewal of Certification

A school seeking renewal of certification shall apply in writing to the commissioner no later than six months prior to the end of any period of certification. Where appropriate, the school may incorporate by reference its prior application or any portion thereof. Certification of a school completing timely application shall extend until the State Board acts on further certification.

2243.4 Costs of Review

Post-secondary schools seeking a certificate of approval or renewal thereof shall be responsible for payment of up to \$1000.00 to the Vermont Department of Education to cover the actual costs of services related to the certification and, in addition, for payment of travel, food and lodging expenses associated with evaluation costs. Schools seeking a certificate of degree-granting authority shall be responsible for payment of \$1500.00 to the Department of Education for transfer to the Vermont Higher Education Council to cover the costs of certification and, in addition, for payment of

travel, food and lodging expenses associated with evaluation costs. Payment of the costs of services related to certification shall accompany the application and is non-refundable. An application shall not be deemed complete until the payment is made.

Transition provision. A post-secondary school which applied for a certificate of approval or degree-granting authority in Vermont after July 1, 1990 but before the effective date of these rules shall make payments as specified in the preceding paragraph except that such payments shall be made at any item prior to the determination by the State Board of Education on certification.

2243.5 Criteria for Issuance of a Certificate of Approval

To be issued a certificate of approval, an applicant shall demonstrate the following:

2243.5.1 Resources Required to Meet Stated Purposes

The school shall submit a clear and specific statement of purpose regarding the education which it intends to provide and shall demonstrate that it has the resources, including personnel, curriculum, finances, and facilities necessary to accomplish its stated purposes. All activities conducted by the school shall be consistent with its stated purpose.

2243.5.2 Stability

- (a) Sources of Income. The school shall have a plan for financing each proposed degree level or program. The plan shall specify the dollar amounts and proportions of income by source, including but not limited to: (1) tuition and fees, (2) other school generated funds, (3) federal or state funds, and (4) private funds.
- (b) Financial Capability. The school shall demonstrate in its financial plan that it will have sufficient funds to maintain operation and shall clearly document its ability to fulfill contractual obligations to students.
- (c) Management. The school shall operate under a governing structure which clearly delineates responsibility for all legal aspects of operations. The school shall demonstrate sound business and financial management by showing evidence of an internal organization for the administration of its financial resources and a school budget planning process.

In addition, the school shall maintain adequate financial records audited annually by an independent certified public accountant.

2243.5.3 Disclosure

Information provided by the school to prospective students either directly or through advertisements shall not be false or misleading. The school shall be able to substantiate any claims regarding such matters as the likelihood of employment, graduate school admission or transfer of credit. The following information shall be disclosed in a general catalogue, bulletin or other public information document provided to prospective students prior to enrollment:

- (a) Name and address of school.
- (b) Date of publication of the document and the period of time to which it pertains.
- (c) The school's calendar including beginning and ending dates of educational programs, holidays and other dates of importance.
- (d) The purpose and philosophy of education of the school.
- (e) A brief description of the school's physical facilities as related to the educational program.
- (f) An accurate list of all educational activities.
- (g) An indication of when specific required courses or other required learning experiences will normally be available.
- (h) Educational content of each course, or of the program if separate courses do not exist.
- (i) The length of time in hours, weeks or months normally required for completion of the educational program.
- (j) An accurate listing of current educational providers.
- (k) An indication of the distinction, if any, between adjunct or part-time educational providers and full-time educational providers.

- (l) Policies and procedures regarding the extent to which educational experiences at other schools or other forms of learning will be counted toward meeting graduation requirements.
- (m) Requirements for graduation.
- (n) Statement of certificates or diplomas awarded upon graduation, if any.
- (o) Statement of degrees awarded upon graduation, if any. If a degree is to be conferred by an out-of-state post-secondary school as a result of credits earned both at a school doing business in Vermont and elsewhere as a condition of the degree, how the credits earned in Vermont are integrated into the overall degree requirements.
- (p) System of grading or evaluation.
- (q) The school's policy establishing standards for determining adequate progress.
- (r) Availability and extent of such student services as job placement service, counseling for academic and personal problems, food service facilities, and parking facilities.
- (s) The availability of financial aid.
- (t) An accurate representation of, and the distinction between, school accreditation, institutional memberships in professional organizations, specialized or professional program accreditation, state VA-approving agency course approval and state certification.
- (u) The school's policy regarding refund of tuition and other fees collected in advance of enrollment or class attendance.
- (v) The school's "closing" policy establishing procedures which will be followed in the event that a determination is made to cease operation.
- (w) The school's student records policy with provisions regarding access, disclosure and the cost of copies.

- (x) After July 1, 1991, a statement that credits earned at the school are transferable only at the discretion of the receiving school.

2243.5.4 Facilities

The school's facilities shall meet all applicable state, federal and local fire, safety, health and access standards.

2243.5.5 Student Records

The school shall have adequate procedures for the safe keeping of student records and for complying with the requirements of 16 VSA §175.

2243.5.6 Waiver of Requirements for Certification

A school which believes that one or more of the above requirements for certification should not be applied to it may request that such requirement be waived in its application for certification. The State Board may waive requirements and grant certification when it determines that the school is capable of providing its proposed program and that the students are adequately protected.

2243.6 Criteria for Issuance of a Certificate of Degree Granting Authority

To be issued a certificate of degree granting authority, a school shall show that it meets all of the criteria for issuance of a certificate of approval and in addition shall demonstrate the following:

2243.6.1 Degree Criteria

Schools desiring to offer post-secondary degrees including graduate degrees, shall clearly state their criteria for granting each degree and the procedure for determining that these criteria are met. Schools desiring to offer an associate degree shall provide and require completion of a minimum of 60 credit hours or equivalent learning experiences. Each educational program leading to a baccalaureate degree shall provide and require a minimum of 120 semester credit hours or equivalent learning experiences. Candidates for a degree shall be required to complete a coherent program of study.

2243.7 Certification Limitations

The State Board may grant a certificate of approval or degree granting authority, or renewal thereof, for a period of time the Board deems reasonable and appropriate not to exceed five years and upon such conditions, terms or limitations as the Board deems necessary. A school which has been granted a certificate shall notify the State Board prior to making substantive changes in or additions to the educational program described in its last application for certification. The State Board may require a school to re-apply for certification following program changes which are inconsistent with the purposes and educational philosophy stated by the school in its most recent application for certification or prior to offering a new level or degree.

2243.8 Denial, Approval with Stipulations, Revocation or Suspension of Certification

2243.8.1 Process

Prior to recommending denial, approval with stipulations, revocation or suspension of certification to the State Board, the Commissioner shall notify in writing the school of the reasons for the proposed action. The school shall be given 30 days to respond, and, if requested, shall be afforded a hearing before the Commissioner or his or her designee. The school shall also be afforded an opportunity to be heard by the Board before any action is taken.

2243.8.2 Criteria for Revocation or Suspension

The Board may suspend or revoke certification for good cause. Good cause shall include, but not be limited to:

- (a) Failure of the school to continue to meet criteria for certification herein specified.
- (b) Failure of the school to meet terms and conditions or limitations of certification established by the Board.
- (c) Falsification of information provided to the Board.
- (d) False or deceptive advertising.
- (e) Judgment of bankruptcy in a liquidation proceeding.
- (f) Ceasing of operation, or

- (g) Refusal to permit team evaluation or other investigations provided for under these regulations.

2243.8.3 Investigations

The Commissioner may conduct any investigations of a school deemed necessary and appropriate in order to insure compliance with the terms of these regulations. A school shall permit any authorized representative of the Commissioner to visit its facilities and secure relevant information during the normal course of business. The school shall be notified prior to such a visit.

2250 Preservation of Post-Secondary Institutions' Student Records

2250.1 Statutory Authority: 16 VSA §175

Institutions of higher education are required to maintain their student academic records in a form prescribed by the State Board of Education. The State Department of Education, Division of Adult Education Services, is authorized to insure that the student academic records are in appropriate form. The institution of higher education is required to inform the State Board in the event it intends to close and to surrender its student academic records to a repository designated by the Board for storage. The repository is authorized to make verified copies available to students and former students.

2250.2 Maintenance of Academic Records

Each institution of higher education operating in this state shall maintain its permanent records in such a manner that they could be delivered to the State Board of Education in a satisfactory form should the institution discontinue operation. At a minimum, the records shall be kept current and preserved against damage or loss.

Monitoring

Upon reasonable notice, every institution shall make available to a representative of the State Board of Education its student records for the purpose of ensuring compliance with this regulation. Examination of the records under this section shall take place in a manner that will not permit identification of individual students.

Return of Records

A repository may duplicate the records of an institution and then return the original records to the institution.

Institutions Discontinued Prior to April 25, 1979

The custodian of records of institutions discontinued prior to April 25, 1979, shall be subject to the requirements of 16 VSA §175 and these regulations.

2250.3 Form and Contents of Academic Records

The permanent academic record of each student registered for credit at an institution of higher education which operates in this state, whether or not such institution is chartered in this state, shall contain at a minimum:

- the identification of the institution;

- the identification of the student;

- the record of courses satisfactorily completed and evaluation of the student's work therein, or, if records are not kept in this form, other records of the student's studies and academic progress;

- periods of enrollment covered by the third item above;

- the student's status at the close of the last period of enrollment;

- degree and/or certificates awarded.

A key to, or explanation of, the student's permanent academic record shall be available to accompany this record.

2260-2265.3 were repealed as of 4/24/96

2266 Post-Secondary Correspondence Schools

A correspondence school which offers post-secondary credits or degree(s) shall also meet the applicable requirements of §§176 and 176a of Title 16.

2270 Private Kindergarten Approval

2/1985

Statutory Authority 16 VSA §166(b)

2271 Procedure for Approval

2271.1 Application

Every person or entity seeking to operate as an approved kindergarten shall apply in writing to the Commissioner of Education.

An application for approval shall contain the following:

Name and address of the school;

A description of the school's curriculum and methods of instruction;

A description of the school's physical facilities;

A list of the school's staff and their qualifications;

The operating schedule of the school; and

A statement certifying that the school is in compliance with the Kindergarten-Nursery School provisions in the Regulations for Day Care of the Social and Rehabilitation services Department (hereinafter "S.R.S. Kindergarten Regulations").

2271.2 Appointment of Reviewer

Upon receipt of an application for approval, the Commissioner shall appoint an educator to review the application and visit the school. In addition, the Commissioner shall contact S.R.S. to determine on his or her behalf whether the school meets the "S.R.S. Kindergarten Regulations". First priority for review shall be given to private kindergartens that are located in the vicinity of towns where the local school board or town has taken a formal vote to provide public supported kindergarten.

2271.3 Review

The appointed educator shall review the application and visit the school.

2271.4 Report to Commissioner

The appointed educator shall present a written recommendation regarding approval to the Commissioner. The report of the appointed educator shall incorporate the determination of S.R.S. concerning compliance with the “S.R.S. Kindergarten Regulations”. A copy of the recommendation shall be provided at the same time to the applicant.

2271.5 Board Recommendation

The Commissioner shall recommend approval or disapproval for action by the State Board at their next meeting. Officials of the kindergarten shall be notified of this meeting date.

2272 Criteria for Approval

The State Board shall approve a private kindergarten if it finds that:

2272.1 The curriculum embodies a minimum course of study, as defined in 16 VSA §906, Courses of Study, with learning experiences adapted to a pupil’s age and ability.

2272.2 The school is in compliance with state requirements pertaining to the health and safety of pupils adopted by the Department of Labor and Industry and the Department of Health. In regards to health requirements, private kindergartens located in elementary or secondary school buildings shall comply with the Environmental Health Regulations for School Houses (Chapter 5, Subchapter 3, Vermont Health Regulations). All other private kindergartens shall comply with the Environmental Health Regulations for Day Care Facilities (Chapter 5, Subchapter 14, Vermont Health Regulations).

2272.3 The director and teachers in the kindergarten are qualified through training or experience in:

structuring kindergarten learning environments which enhance cognitive and social development;

teaching skills and concepts in mathematics, language arts, science, the arts, and health which are consistent with principles of child development.

planning and leading activities that foster social and emotional growth in young children;

dealing with parents and family of children to ensure home support and to promote learning outside of the school or center, and

identifying developmental delays in young children.

2272.4 The kindergarten maintains an operating schedule that, exclusive of time allowed for meals and recess periods, includes a total number of instructional hours which is not less than that required of a public school kindergarten. (State Board of Education Policy Manual, 1981, Section 2311.4).

2272.5 The facility and program meet the “S.R.S. Kindergarten Regulations”.

2273 Additional Requirements

2273.1 Approved private kindergartens shall maintain records of attendance, health, and progress for public tuition students, in a form required by the school district and in accordance with state and federal law. These records shall be transferred to the public schools no later than July 15 after the end of the school year.

2273.2 The director and teachers in an approved private kindergarten shall participate in professional development activities provided by the public school district.

2274 Term of Approval

The State Board may grant approval for a term of not more than two years. A private kindergarten must be approved prior to receiving tuition payments from a public school district.

2275 Denial, Revocation or Suspension of Approval

Prior to recommending denial, revocation or suspension of approval to the State board, the Commissioner shall notify the kindergarten of the reasons for the proposed action and shall afford the kindergarten an opportunity to be heard by the Board. Approval of a kindergarten shall be revoked or suspended by the Board based on a finding that the kindergarten no longer meets the criteria for approval.

2300 LENGTH OF SCHOOL DAY AND YEAR

2/9/06

Specific Program Requirements for Public Schools

2310 Length of School Day and Year

2311 School Year. Each public school shall be maintained and operated for 175 student days unless waivers are granted by the Board as provided by 16 VSA §1071.

2311.1 Days lost because schools are closed for emergency reasons prior to February 1 of any year shall be rescheduled and made up during that school year when such closing will result in a schedule of less than 175 pupil attendance days for the year.

2311.2 Petitions for waivers of the 175 student attendance days shall be submitted to the Commissioner's office within 10 days as stipulated by law.

2311.3 Petitions received between February 1 and June 15 will be considered on a case-by-case basis. When a petition is sought for emergency reasons, the State Board will consider the school district's calendar to determine if a substantial number of contingency days were included, particularly if the cause is inclement weather conditions.

2311.4 School districts shall include no fewer than five contingency days as annual school calendars are developed and adopted.

2311.5 Day of Mourning. Whenever a National Day of Mourning falls on a regularly scheduled school day, the day shall be counted as a full day of school.

2312 Length of School Day

2312.1 Except as provided in Rule 2311.5, the school day shall be:

- (a) for kindergarten, a minimum of two instructional hours. However, in any calendar week, five school days may be counted if the total number of hours of instructional time is equal to or exceeds 10 hours per week.
- (b) for grades 1-2, a minimum of four instructional hours including recess, excluding lunch. However, in any calendar week, five school days may be counted if the total number of hours of instructional time is equal to or exceeds 20 hours, including recess, excluding lunch.
- (c) for grades 3-8, a minimum of 5 ½ instructional hours, including recess, excluding lunch. However, in any calendar week, five school days may be counted if the total number of hours of instructional time is equal to or exceeds 27 ½ hours, exclusive of the time allowed for recess and lunch.

(d) for grades 9-12, a minimum of 5 ½ instructional hours, exclusive of the time allowed for recess and lunch. However, in any calendar week, five school days may be counted if the total number of hours of instructional time is equal to or exceeds 27 ½ hours, exclusive of the time allowed for recess and lunch.

2312.2 Exceptions to Length of School Day

- (a) Where the board of school directors has found it necessary to delay the opening of the school day by up to two hours or to send the pupils home after school has begun due to emergencies such as the outbreak of a contagious disease, unsafe building conditions, hazardous weather, high water, unsafe highways, or a fire, the day may be counted as a full day of school.
- (b) Upon request of the board of school directors, the Commissioner may permit alternate methods of counting the cumulative instructional hours set forth in subsection 2311.4 of this section where:
 - (1) overall, students do not lose instructional time;
 - (2) students do not lose transportation to and from school or to other educational programs during the school day;
 - (3) students do not lose access to related education programs such as technical or special education; and
 - (4) it is otherwise in the interests of the students and the district.

2343 Vermont Secondary Equivalency Program

7/1985

Students who receive a standard score of 35 or above on each of the five tests of the General Education Development Test and an average standard score of 45 on all five tests will be entitled to a Vermont secondary school equivalence certificate providing age and residence requirements are met.

Vermont regulations require that an applicant for this certificate offer satisfactory evidence of residence in this state and attain 18 years of age, or 16 years of age if the parent or guardian has given written consent, unless there are extenuating circumstances. Applications should be made on a special form, available on request, to the State Department of Education.

2344-2349 (Vacant)

2350 Driver and Traffic Safety Education Programs

- 2350 A driver education program shall include an approved driver education course during regular school hours as a part of the offerings of the regular school-day program.
- 2351 To be approved by the Department of Education, a driver education course must consist of at least 30 clock hours of class instruction and at least 6 hours of behind-the-wheel instruction by a certified driver education instructor. No more than 2 hours of classroom instruction, and 1 hour of behind-the-wheel instruction shall be provided to a student in one day.
- Courses provided by secondary schools for persons above high school age, who are unlicensed beginners, shall consist of at least 20 clock hours of classroom instruction plus 6 or more clock hours per student of behind-the-wheel instruction or its equivalent.
- 2352 Unless the driver education course offered to persons not regularly enrolled in high school is the course approved by the Department of Education and the Department of Motor Vehicles in accordance with the state law, the instruction becomes a “driver training school” as defined in 23 VSA, Section 701, and the persons offering the course must be specially licensed pursuant to 23 VSA, Section 702. In either case, the instructor must have a valid instructor’s license. None of the expenses for this adult program shall be included in the claims for reimbursement under the State High School Driver Education Program.
- 2353 Behind-the-wheel instruction of pupils on the Interstate Highway System in Vermont shall be conducted only near the end of the required six clock hours of in-car practice driving for each student.
- 2354 Safety, insurance and other legal requirements shall be met according to 23 VSA, Section 921.

State of Vermont



Special Education Rules



Adopted June 1, 2013

**STATE OF VERMONT
GOVERNOR**

Peter Shumlin

**VERMONT AGENCY OF EDUCATION
SECRETARY**

Armando Vilaseca

**VERMONT STATE BOARD OF EDUCATION
2013**

Stephan Morse, <i>Chair</i>	Newfane
Sean-Marie Oller, Co-chair	Bennington
Lachlan Francis, Co-Chair	Putney
Laura Harris	Williston
Krista Huling	Jefferson
Bonnie Johnson-Aten	Montpelier
Margaret MacLean	Peacham
William Mathis	Brandon
Stacy Weinberger	Burlington
Mark Perrin	Middlebury

The Vermont Agency of Education does not discriminate on the basis of race, national origin, creed, marital status, gender, disability, age or sexual orientation in its programs or activities.

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
<u>Statutory Authority</u>	11
<u>Introduction</u>	
Individuals with Disabilities Act (IDEA)	11
<u>General Provisions</u>	
2360 Special Education in Vermont	15
2360.1 Statement of Purpose	15
2360.2 Free and Appropriate Public Education (FAPE)	15
2360.2.1 FAPE for Children beginning at age 3	15
2360.2.2 FAPE for Students who have graduated	16
2360.2.3 FAPE for Students who have dropped out of school	16
2360.2.4 FAPE for Children advancing grade to grade	16
2360.2.5 FAPE for Students incarcerated in adult correctional facilities	16
2360.2.6 Residential Placement	18
2360.2.7 Assistive Technology	18
2360.2.8 Extended School Year Services	18
2360.2.9 Non-academic services	19
2360.2.10 Physical Education	19
2360.2.11 Program Options	20
2360.2.12 Special Education Services	20
2360.2.13 Personnel Qualifications	22
2360.2.14 Required Forms	23
2360.2.15 Use of Insurance	23
2360.2.16 Related Services	26
2360.2.17 Individualized Education Programs	29
2360.2.18 Routine checking hearing aids and external medical devices	29
2360.3 Child Find	30

<u>Section</u>	<u>Page</u>
2360.4 Reserved	32
<u>Part C – Vermont Rules Governing Services to Children Birth up to Age Three</u>	35
2360.5 Part C Early Intervention Services	35
2360.5.1 Part C Definitions	35
2360.5.2 Public Awareness and Child Find	42
2360.5.3 Screening	44
2360.5.4 Evaluation of the Child & Assessment of the Child and Family	45
2360.5.5 Eligibility	48
2360.5.6 Individualized Family Services Plan (IFSP/One Plan)	50
2360.5.7 Notification of Transition at Age Three	54
2360.5.8 Late Referral Procedures	55
2360.5.9 Transition Conference	56
2360.5.10 Eligibility for Essential Early Education Services at Age Three	57
2360.6 Records	59
2360.7 Procedural Safeguards	60
<u>Part B – Vermont Rules Governing Services to Children Ages Three Through Twenty-one</u>	63
2361 Part B – Serving Children/Students Ages Three through Twenty-one	63
2361.1 Part B Definitions	63
2361.2 Essential Early Education (EEE) –Eligibility of Children Age 3 up to 6	74
2361.3 Educational Placement in the Least Restrictive Environment (LRE)	75
2361.4 Transition for Children Moving into Kindergarten	76
2361.5 IEP Content	76
2362 Eligibility for Children Ages Six Years through Twenty one	77
2362.1 Categories of Disabilities	79
2362.2 Evaluation & Eligibility Determination Procedures-Definition & Purpose	85
2362.2.1 Initial Evaluations	86
2362.2.2 Evaluation Planning Team (EPT)	87

<u>Section</u>	<u>Page</u>
2362.2.3 Re-Evaluation Requirements	89
2362.2.4 Evaluation Procedures	89
2362.2.5 Additional Procedures for Identifying Children with SLD	94
2362.2.6 Evaluation and Planning Team Report	96
2362.2.7 Students with Disabilities but ineligible for Special Education	98
2362.2.8 Independent Education Evaluation	99
 2363 Individualized Education Programs (IEP)	 101
2363.1 Timelines	101
2363.2 Responsibility of Local Education Agencies (LEAs) for IEPs	101
2363.3 Individualized Education Program Team	102
2363.4 Parent Participation in IEP Meetings	104
2363.5 Notice about IEP Meeting	105
2363.6 Development, Review and Revision of IEP	106
2363.7 Content of IEP	108
2363.8 Consent for Initial Provision of Special Education Services	111
2363.9 Distribution and Explanation of the IEP Document	112
2363.10 IEP Requirements for Placements by LEAs to Independent School or Tutorial Programs	113
2363.11 IEP for Student Transferring In and Out of a Local Education Agency	114
2363.12 IEP Accountability	115
 2364 Least Restrictive Environment (LRE)	 117
2364.1 General Least Restrictive Environment Requirements	117
2364.2 Continuum of Alternative Placements	117
2364.3 Placements	118
2364.4 LRE for Non-Academic and Extra-curricular Activities	118
2364.5 Technical Assistance, Training and Monitoring Activities for LRE	119
2364.6 Instructions for Homebound or Hospitalized Special Education Students	119

2365	Parental Rights and Confidentiality of Information	121
2365.1	Parental Rights	121
2365.1.1	Content of Notice	121
2365.1.2	Procedural Safeguards Notice	122
2365.1.3	Parental Consent	123
2365.1.4	Mediation	125
2365.1.5	Administrative Complaint	127
2365.1.6	Due Process Complaint Procedures	129
2365.1.7	Impartial Hearing Officer	144
2365.1.8	Finality of a Due Process Hearing Decision: Appeal	145
2365.1.9	Civil Action	145
2365.1.10	Attorney's Fee	146
2365.1.11	Child's Status During Proceedings	148
2365.1.12	Transfer of Parental Rights at Age of Majority	148
2365.2	Confidentiality of Information and Student Records	149
2365.2.1	Notice to Parents	150
2365.2.2	Access Rights to Records	150
2365.2.3	Record of Access	151
2365.2.4	Records on More than One Child	151
2365.2.5	List of Types and Locations of Information	151
2365.2.6	Fees	151
2365.2.7	Amendment of Records at Parent's Request	152
2365.2.8	Opportunity for a Hearing	152
2365.2.9	Result of Agency's Hearing	152
2365.2.10	Hearing Procedures	153
2365.2.11	Consent	153
2365.2.12	Safeguards	154
2365.2.13	Destruction of Information	155
2365.2.14	Children's Rights	155
2365.2.15	Disciplinary Information in Student Records	156

2366	State Funding for Special Education	157
2366.1	Special Education Service Plan	157
2366.2	Allowable Special Education Expenditures for State Formula Reimbursement	157
2366.2.1	Instructional Services	157
2366.2.2	Related Services	159
2366.2.3	Special Education Administration	159
2366.2.4	Evaluation Costs	160
2366.2.5	Costs of Placement in Approved Independent Schools	160
2366.2.6	Unallowable Expenditures	161
2366.2.7	Transition from Residential Placement	161
2366.2.8	Special Education Administrative Costs	162
2366.3	Special Education Expenditures Defined	162
2366.4	Financial Expenditure Report	163
2366.4.1	Appealing Late Fee Penalties	163
2366.4.2	Filing an Appeal of Penalties	163
2366.4.3	Appeal decision	163
2366.4.4	Un-forgiven Penalties	163
2366.5	Corrections Education	164
2366.6	Collaborative Programs	164
2366.6.1	Collaborative Program Definition; Tuition	164
2366.6.2	Collaborative Program Accounting	164
2366.6.3	Non-Collaborative Tuition	165
2366.6.4	Excess Costs Procedure	165
2366.6.5	Allowable Costs Reporting	166
2366.6.6	Reserved	166
2366.6.7	Allocation of Attorney's Fees	166
2366.6.8	Schedule of Special Education Payment and Reporting	166
2366.7	Reimbursement for the Costs of Educating State-Placed Children	167
2366.7.1	State Placed Student	167
2366.7.2	LEA Reimbursement for Special Education Costs	167
2366.7.3	Payments for State-Placed Students in Residential Placements and Out-of-State Public Schools	168

2366.8	State Funding for Essential Early Education	168
2366.8.1	Essential Early Education Funds	168
2366.8.2	Essential Early Education Grant Funding	168
2366.9	Residential Placements	169
2366.9.1	State Operated Residential Schools and Day Programs	169
2366.9.2	Individual Residential Placements	169
2366.10	Local Education Agency Plan	173
2367	Reserved	175
2368	Children with Disabilities Enrolled in Independent Schools & Home Study	177
2368.1	Parentally Placed Students in an Independent School or Home Study	177
2368.1.1	Child Find	177
2368.1.2	Child Count	178
2368.1.3	Proportionate Share of IDEA B Funds	178
2368.1.4	Ineligible for FAPE when Parentally Placed	179
2368.1.5	Services Determined	179
2368.1.6	Service Plan and Record Keeping	181
2368.1.7	Equitable Services Determined	182
2368.1.8	Location of Services: Transportation	183
2368.1.9	Funds May not Benefit Independent School or Home Study	184
2368.1.10	Use of Public and Independent School Personnel	184
2368.1.11	Property, Equipment and Supplies	185
2368.1.12	Complaints	185
2368.2	School Districts without a Public School	186
2368.3	Placement of Children by Parents if FAPE is at Issue	187
2369	Educational Surrogate Parent	189

Supplemental Rules Pertinent to Special Education and Section 504 of the Rehabilitation Act	193
1251 Reasonable Accommodations	193
1252 Instruction for Homebound and Hospitalized Students	193
1253 Hearings Under Section 504	193
2120.8.2.1 (c) Multi-Year Plans	194
2194 Educational Support System	194
2195 Grant Application for In-service Training Funds	195
2224.2 Tuition for Independent Schools	196
2228 Special Education Approval of Independent Schools	196
2228.1 Special Education Approval of Independent Schools	196
2228.2 Placement Restrictions	197
2228.3 Requirements for Approval	198
2228.4 Written Agreements Required	199
2228.5 Special Education Approval Procedures	199
2228.6 Notification of Changes	200
2228.7 Minimum Standard of Service	200
2228.8 Rate Approval for Independent Schools Approved for Special Education	201
2228.9 Standards and Regulations	202
2229 Corrections Education Program	202
2230 Approval of Tutorial Programs	202
2230.1 Tutorial Programs	202
2230.2 Procedures for Approval	202

2230.2.1	Application Contents	202
2230.2.2	Review	203
2230.2.3	Report to the Secretary	203
2230.2.4	Board Action	203
2230.2.5	Term of Approval	203
2230.2.6	Renewal	203
2230.2.7	Denial, Revocation or Suspension of Approval	204
2230.2.8	Standards and Regulations	204
2230.3	Criteria for Approval	204
2230.4	Rate Approval for Tutorial Program	206
4312	Discipline Procedures for Students who are Eligible for Section 504 Services	209
4313	Discipline Procedures for Students Eligible for Special Education Services	213
4313.1	Authority of School Personnel	213
4313.2	Determination of Setting	216
4313.3	Appeal	216
4313.4	Placement During Appeals	218
4313.5	Protections for Children Ineligible for Special Education & Related Services	218
4313.6	Referral to and Action by Law Enforcement and Judicial Authorities	219
4313.7	Change of Placement because of Disciplinary Removals	220

STATE OF VERMONT

SPECIAL EDUCATION RULES

STATUTORY AUTHORITY

Federal Statutory Authority:

Individuals with Disabilities Education Act of 2004

State Statutory Authority in accordance with 3 V.S.A. Chapter 25:

16 V.S.A. §164(7)

16 V.S.A. Chapter 101

Introduction:

INDIVIDUALS WITH DISABILITIES EDUCATION ACT 2004

The Individuals with Disabilities Education Act (IDEA), first enacted in 1975 and most recently revised in 2004, is a federal law governing how States provide accommodations, and services to support children and students with disabilities in their education.

IDEA is composed of four parts:

- ◆ Part A – General Provisions
- ◆ Part B – Assistance for Education of All Children with Disabilities (ages 3-22)
- ◆ Part C – Infants and Toddlers with Disabilities (birth – 3)
- ◆ Part D – National Activities to Improve Education of Children with Disabilities

These Rules relate specifically to Part C and Part B of IDEA and also provide reference to other pertinent Federal and State Rules governing special education in Vermont. Major Rules Sections are organized based on chronology:

- (1) General – Vermont Special Education Rules
- (2) Part C – Rules governing services to children birth up to age three
- (3) Part B – Rules governing services to students ages three through twenty-one
- (4) Supplemental Rules Pertinent to Special Education and Section 504 of the Rehabilitation Act of 1975

General Provisions

of Vermont's Special Education Rules

Page left blank intentionally

2360 Special Education

2360.1 Statement of Purpose

These rules are designed to ensure that:

- (a) Eligible Vermont students with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; in accordance with state and federal laws and regulations and in a cost-effective manner; and
- (b) The rights of children with disabilities and their parents are protected.

2360.2 Free Appropriate Public Education (FAPE) (34 CFR §300.101)

These rules implement the Individuals with Disabilities Education Improvement Act (IDEA), as amended. These rules provide for the education of children and students between the ages of 3 through 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in Rule 4313. The Agency may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, if it is necessary to place a child with a disability in a residential facility, the State could use joint agreements between the agencies involved for sharing the cost of that placement.

Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability. Consistent with Rule 2363.1 the Agency shall ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

2360.2.1 FAPE for children beginning at age 3:

An eligible child shall be entitled to a free appropriate public education beginning no later than the child's third birthday and continuing, unless otherwise provided herein, through 21 years of age. An individualized education program (IEP), rather than an individualized family service plan (IFSP/One Plan), shall be in effect for an eligible child by his or her third birthday. If a child's third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP will begin.

2360.2.2 FAPE for students who have graduated:

A student who has graduated from high school with a regular high school diploma shall not be entitled to a FAPE. A student who has not yet graduated and whose entitlement to a FAPE ends because the upper age limit of eligibility is reached as described in Rule 2360.2(a), may be allowed to complete the remaining academic year with IEP team approval and approval from the Agency of Education.

2360.2.3 FAPE for students who have dropped out of school:

If a student drops out of school, that student may return at any time and request to be provided with a FAPE until the student graduates with a high school diploma or the student's entitlement to a FAPE ends because the upper age limit of eligibility is reached as described in Rule 2360.2.

2360.2.4 FAPE for children advancing from grade to grade:

Each LEA shall provide a FAPE to any individual child with a disability, who is eligible for special education, even though the child has not failed or been retained in a course or grade and is advancing from grade to grade. The determination that a child advancing from grade to grade may be eligible for special education shall be made on an individual basis by the child's EPT or IEP team.

2360.2.5 FAPE for students who are incarcerated in adult correctional facilities:

- (1) For a person between the ages of 18 through age 21:
 - (i) If a person in his or her last educational placement before incarceration had not been identified as a child with a disability who was eligible for special education and did not have an IEP in place, the Department of Corrections will not be mandated to provide a FAPE.
 - (A) The Department of Corrections shall make reasonable efforts to obtain and review whatever information is needed to determine that the incarcerated individual has not been identified as a child eligible for special education and

did not have an IEP in his or her last educational placement prior to incarceration in an adult correctional facility.

(ii) A person who is incarcerated shall be entitled to a FAPE if:

(A) The person was provided services through an IEP before incarceration;

(B) The person had been provided services through an IEP, had left school, then was incarcerated; or

(C) The person had not been provided services through an IEP, but had been identified as a child with a disability who was eligible for special education. .

(iii) The following requirements do not apply to incarcerated students aged 18 through 21 (34 CFR §300.324):

(A) The requirement to participate in district-wide assessment programs and

(B) The IEP requirements for transition planning and transition services, if the inmate will reach the upper age limit for a FAPE before release from prison based on consideration of sentence and eligibility for early release.

(iv) Modifications of IEP or placement.

(A) The IEP team may modify the student's IEP or placement, if the Department of Corrections has demonstrated a bona fide security or other compelling interest that cannot otherwise be accommodated.

(B) The LRE requirements of Rule 2364 do not apply to incarcerated students on IEPs.

(2) For incarcerated persons under the age of 18, the Department of Corrections shall ensure that at intake, a screening occurs to identify those who have a disability or who are suspected of having a disability and who are in need of special education. Those who are in need of special education shall be provided with an individualized educational program (IEP) and re-evaluations as prescribed under Rule 2362.

2360.2.6 Residential Placement (34 CFR §300.104)

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, shall be at no cost to the parents of the child.

2360.2.7 Assistive technology (34 CFR §300.105)

- (1) Each LEA shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in Rule 2361.1(3), are made available to a student with a disability if required as a part of the student's:
 - (i) Special education services under Rule 2360.2.12;
 - (ii) Related services under Rule 2360.2.16; or
 - (iii) Supplementary aids and services under Rules 2361.1(35).
- (2) On a case-by-case basis, the use of school purchased assistive technology devices in a student's home or in other settings is required if the student's IEP Team determines that the student needs access to those devices in those settings in order to receive FAPE (34 CFR §300.105(b)).
- (3) A plan to ensure that all instructional materials to be used are available in a usable alternative format which shall meet the National Instructional Materials Accessibility Standard (NIMAS); in accordance with Appendix C to part 300 of title 34 of the Code of Federal Regulations for each student with a disability in accordance with that student's IEP. Such material shall be delivered in a timely manner. Timely manner shall mean that schools will ensure that students with print disabilities have access to special instructional materials at the same time as students without print disabilities.

2360.2.8 Extended School Year Services (34 CFR §300.106)

Each LEA shall ensure that Extended School Year Services (ESY) are available as necessary to provide FAPE consistent with Rule 2363.7(h) and at no cost to the parents of the child.

2360.2.9 Non-academic services (34 CFR §300.107)

- (1) Each LEA shall take steps including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team to provide non-academic and extra-curricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.
- (2) Non-academic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the LEA, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the LEA and assistance in making outside employment available.

2360.2.10 Physical education (34 CFR §300.108)

Each LEA shall:

- (1) Provide physical education services, specially designed if necessary, that shall be made available to every child with a disability receiving FAPE unless the LEA enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.
- (2) Afford the opportunity to each eligible child to participate in the regular physical education program available to nondisabled children unless--
 - (i) The child is enrolled full time in a separate facility; or
 - (ii) The child needs specially designed physical education as prescribed in the child's IEP.
- (3) Special physical education. If specially designed physical education is prescribed in a child's IEP, the LEA responsible for the education of that child shall provide the services directly or make arrangements for those services to be provided through other public or private programs.
- (4) Education in separate facilities. The LEA responsible for the education of an eligible child who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services in compliance with this section.

2360.2.11 Program options (34 CFR §300.110)

Each LEA shall ensure that children receiving special education have available to them the variety of educational programs and services available to nondisabled children in the LEA, including art, music, industrial arts, consumer and homemaking education, and vocational education.

2360.2.12 Special Education Services

The term "special education" means specially designed instruction that cannot be provided within the school's standard instructional conditions or provided through the school's educational support system, at no cost to the parent, to meet the unique needs of an eligible child with a disability. Specially designed instruction means adapting, as appropriate, to the needs of an eligible child, the content, methodology, or delivery of instruction:

- (a) To address the unique needs of the child that result from the child's disability; and
 - (b) To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the LEA that apply to all children.
- (1) Special education services include, as appropriate:
 - (i) Classroom instruction, home instruction, instruction in hospitals and institutions and instruction in other settings;
 - (A) Co-teaching services is the delivery of special education services in the general education classroom provided jointly by the general education classroom teacher and a special education teacher.
 - 1) By selecting the co-teaching services model, the IEP team has determined that there is no compelling reason why the child's instruction cannot be provided jointly in the general education classroom. The general education classroom teacher shall be an active participant in IEP meetings.
 - 2) The general education and special education teachers will review and document each child's progress towards course objectives and IEP goals.
 - 3) Should a progress review at any grading period indicate that a

child is in danger of failing a course or is not making satisfactory progress towards IEP goals, the IEP team shall meet immediately to:

- a) Determine continued co-teaching services or change of placement, and
 - b) Revise the IEP as appropriate.
- 4) In order to offer co-teaching services, the LEA must complete a plan for implementation which includes continuous professional development and submit the plan to the Vermont Agency of Education for approval.
- (ii) Instruction in physical education which is the development of physical and motor fitness; fundamental motor skills and patterns; and skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and includes special physical education, adapted physical education, movement education, and motor development.
 - (iii) Speech–language pathology services for the prevention and/or habilitation of speech-language impairments may be special education, if provided as specially designed instruction; or related services, if required to assist a student with a disability to benefit from special education.
 - (iv) Travel training which is the provision of instruction, as appropriate, to children with significant cognitive disabilities and any other children with disabilities who require this instruction, to enable them to:
 - (A) Develop an awareness of the environment in which they live; and
 - (B) Learn the skills necessary to move effectively and safely from place to place within that environment such as school, home, work, and in the community.
 - (v) Technical education which means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

- (c) To ensure successful post-secondary transition, transition services may be special education, if provided as specially designed instruction, or related services, if required to assist a student to benefit from special education.
- (1) “Transition services” means a coordinated set of activities that:
 - (i) Are designed within a results-oriented process, that is focused on improving the academic and functional achievement of the child who is eligible to facilitate the child’s movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
 - (ii) Are based on the individual student's needs, taking into account the student's preferences and interests; and includes:
 - (A) Instruction;
 - (B) Related services;
 - (C) Community experiences;
 - (D) The development of employment and other adult living objectives; and
 - (E) If appropriate, acquisition of daily living skills and functional vocational evaluation

2360.2.13 Personnel Qualifications

- (1) The Vermont Agency of Education has established and maintains qualifications to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.
- (2) Related services personnel and paraprofessionals- The qualifications under subparagraph (i) include qualifications for related services personnel and paraprofessionals that--

- (A) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;
 - (B) Ensure that related services personnel who deliver services in their discipline or profession meet the requirements of section (b)(1) and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
 - (C) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services to children with disabilities.
- (3) Policy: In implementing this section, the Vermont Agency of Education has a policy that includes a requirement that responsible LEAs in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.

2360.2.14 Required Forms

The Secretary shall develop, make available, and publish a list of required and suggested special education forms for use by LEAs in implementing special education and related services.

Responsible agencies shall use the special education forms, which the Secretary designates for required use. The forms provided by the Secretary shall not require more paperwork than is required by federal law and regulation.

2360.2.15 Use of Insurance

- (a) Nothing in these regulations or the regulations implementing the Individuals with Disabilities Education Improvement Act is intended to relieve an insurer, Medicaid or other third party, from an otherwise valid obligation to provide or pay for services to a student who is eligible for special education. AN LEA shall use funds from the State Medicaid reimbursement administrative special fund in accordance with 16 V.S.A. §2959a (e).
 - (1) Children with disabilities who are covered by public insurance.
 - (i) AN LEA may use the Medicaid or other public benefits or insurance programs in

which a child participates to provide or pay for services required under IDEA Part B, as permitted under the public benefits or insurance program, except as provided in paragraph (1)(ii) of this section.

- (ii) With regard to services required to provide FAPE to an eligible child under IDEA Part B, the LEA:
 - (A) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under these rules;
 - (B) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to IDEA Part B, but pursuant to paragraph (4)(ii) of this section, may pay the cost that the parent otherwise would be required to pay;
 - (C) May not use a child's benefits under a public benefits or insurance program if that use would--
 - 1) Decrease available lifetime coverage or any other insured benefit;
 - 2) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;
 - 3) Increase premiums or lead to the discontinuation of benefits or insurance; or
 - 4) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and
 - (D) Shall obtain informed written parental consent, consistent with Rule 2365.1.3(b) with notification to parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the LEA of its responsibility to ensure that all required services are provided at no cost to the parents.
- (2) Children with disabilities who are covered by private insurance.
- (i) With regard to services required to provide FAPE to an eligible child under IDEA Part B, an LEA may access a parent's private insurance proceeds only if the parent provides informed written consent consistent with Rule 2365.1.3(b).
 - (ii) Each time the LEA proposes to access the parent's private insurance proceeds, the

agency shall--

(A) Obtain informed written parental consent consistent with (2)(i); and

(B) Inform the parents that their refusal to permit the LEA to access their private insurance does not relieve the LEA of its responsibility to ensure that all required services are provided at no cost to the parents.

(3) Use of Part B funds.

(i) If an LEA is unable to obtain parental consent to use the parent's private insurance, or public insurance when the parent would incur a cost for a specified service required under this part, to ensure FAPE the LEA may use its Part B funds to pay for the service.

(ii) To avoid financial cost to parents who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the LEA may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).

(4) Proceeds from public or private insurance.

(i) Proceeds from public or private insurance will not be treated as program income for purposes of 34 CFR 80.25, Education Agency General Administrative Regulations (EDGAR).

(ii) If an LEA spends reimbursements from Federal funds (e.g., Medicaid) for services under IDEA Part B, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in 34 CFR §300.163 Maintenance of State Financial Support and § 300.203 Maintenance of Effort obligation for LEAs.

(5) Nothing in these rules should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public benefits or insurance program.

2360.2.16 Related Services

- (a) The term "related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child who requires special education services to benefit from his or her special education.
- (b) Exception. Related services do not include a medical device that is surgically implanted, the optimization of device functioning, maintenance of the device, or the replacement of that device.
- (c) A child will not be designated as a child who is eligible for special education, if the child needs only a related service, but not special education services.
- (d) Related services shall include, but are not limited to:
 - (1) Audiology that includes:
 - (i) Identification of children with hearing loss;
 - (ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
 - (iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;
 - (iv) Creation and administration of programs for prevention of hearing loss;
 - (v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and
 - (vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.
 - (2) Counseling services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.
 - (3) Early identification and assessment of disabilities in children.
 - (4) Interpreting services, as used with respect to children who are deaf or hard of hearing, includes oral transliteration services, cued language transliteration services, and sign language interpreting services.
 - (5) Medical services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

- (6) Occupational therapy is:
 - (i) Services provided by a qualified occupational therapist; and
 - (ii) Includes:
 - (A) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;
 - (B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and
 - (C) Preventing, through early intervention, initial or further impairment or loss of function.
- (7) Orientation and mobility services are:
 - (i) Services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and
 - (ii) Travel training instruction, and teaching students the following, as appropriate:
 - (A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
 - (B) The use of the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;
 - (C) To understand and use remaining vision and distance low vision aids; and
 - (D) Other concepts, techniques, and tools.
- (8) Parent counseling and training as follows:
 - (i) Assisting parents in understanding the special needs of their child;
 - (ii) Providing parents with information about child development; and
 - (iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP/One Plan.

- (9) Physical therapy services provided by a qualified physical therapist.
- (10) Psychological services as in:
- (i) Administering psychological and educational tests, and other assessment procedures;
 - (ii) Interpreting assessment results;
 - (iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
 - (iv) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;
 - (v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and
 - (vi) Assisting in developing positive behavioral intervention strategies.
- (11) Recreation includes:
- (i) Assessment of leisure function;
 - (ii) Therapeutic recreation services;
 - (iii) Recreation programs in schools and community agencies; and
 - (iv) Leisure education.
- (12) Rehabilitation counseling services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.
- (13) School nurse services provided by a qualified school nurse, designed to enable a child with a disability to receive FAPE as described in the child's IEP.
- (14) Social work services in schools include:
- (i) Preparing a social or developmental history on a child with a disability;
 - (ii) Group and individual counseling with the child and family;

- (iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
 - (iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and
 - (v) Assisting in developing positive behavioral intervention strategies.
- (15) Transportation includes:
- (i) Travel to and from school and between schools;
 - (ii) Travel in and around school buildings; and
 - (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.
- (16) Speech-language pathology services include:
- (i) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
 - (ii) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.
- (17) Transition services may be related services, if required to assist a child to benefit from special education.

2360.2.17 Individual Education Programs (IEP) (34 CFR §300.112)

An IEP shall be developed, reviewed and revised for each child with a disability consistent with Rule 2363.

2360.2.18 Routine checking of hearing aids and external components of surgically implanted medical devices (34 CFR §300.113)

- (1) Hearing Aids
 - (i) Each LEA shall ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.
- (2) Surgically implanted devices

- (i) Each LEA shall ensure that the external components of surgically implanted medical devices are functioning properly.
- (ii) LEAs are not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted or of an external component of the surgically implanted medical device.

2360.3 Child Find (34 CFR §300.111)

- (1) All children and students with disabilities, regardless of the severity of their disability, residing within the State, including children and students with disabilities who are homeless or are in State custody or are vulnerable adults, or are attending independent schools or enrolled in home study, and who are in need of special education and related services shall be identified, located and evaluated.
- (2) LEAs are responsible for establishing and implementing a comprehensive Child Find system for children and students from birth through twenty-one years of age.
 - (i) Except for students who are parentally placed in independent elementary and secondary schools outside of the LEA of residence, the LEAs are responsible for ensuring Child Find for all students who reside within the LEA.
 - (ii) For students ages five through twenty-one who are parentally placed in independent elementary and secondary schools outside their LEA of residence, the LEA where the independent school is located shall have Child Find responsibility.
 - (iii) For children birth up to age three, the LEA may fulfill its Child Find responsibility by developing and maintaining a regional agreement with a Children's Integrated Services/Early Intervention (CIS/EI) program or other entities.
- (3) Each LEA shall ensure that public notification is given before conducting any significant activity that is designed to identify, locate and evaluate children and students ages birth through twenty-one. In addition, the AOE shall provide a public notice in major newspapers to inform parents that the information gathered shall be treated confidentially.
 - (i) All notices shall be available in the native languages of the major population groups within the State; and

- (ii) The notices shall indicate that information obtained during “Child Find” shall remain confidential for all children and students as required in Rules 2365.2 – 2365.15 “Confidentiality of Information and Student Records”; and
 - (iii) The notices shall contain a description of the children or students about whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information; and
 - (iv) The notices shall contain a summary of the policies and procedures that participating agencies shall follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
 - (v) The notices shall contain a description of the Family Educational Rights and Privacy Act of 1974 (34 CFR, Part 99) and implementing regulations.
- (4) Each LEA shall annually inform the public regarding the availability of early intervention for children from birth up to age three and special education services for children or students ages three through twenty-one, including:
- (i) Children or students who are not enrolled in school;
 - (ii) Children or students attending independent schools or who are enrolled in home study programs;
 - (iii) Children or students who are suspected of having a disability even though they are advancing from grade to grade; and
 - (iv) Children or students who are highly mobile such as migrant children; and
 - (v) Children or students who are homeless or in State custody or who are vulnerable adults.
- (5) In addition to posting notices in major newspapers, notification activities may also include the posting of notices on websites, fliers in various locations such as physicians’ offices and health centers, radio or television announcements, and community outreach.
- (6) Each LEA shall act as a primary referral source to identify, locate and screen children who may be in need of early intervention services and refer identified children to regional CIS/EI programs. Children who are found to be typically developing based on screening results shall not be considered identified children requiring referral.

- (i) For children birth up to age three, the Child Find system shall employ specific elements of public awareness, screening and referral to regional CIS/EI programs.
 - (ii) For children birth up to age three, the LEA shall act as a primary referral source and notify regional CIS/EI programs of children who may be in need of a comprehensive multidisciplinary initial evaluation to determine eligibility for Part C services.
 - (iii) For children birth up to age three, the Coordinator of the State's Part C CIS/EI program shall forward to the AOE an annual child count of children being served under Part C.
- (7) Each LEA shall identify, locate and evaluate all children and students, who may be eligible for special education and related services, ages three through twenty-one residing within the jurisdiction of the responsible agency.
- (i) Annually each LEA shall submit to the AOE, in the specified electronic format, data requested regarding children and students ages three through twenty-one who have been found eligible for special education under the IDEA.

2360.4 Reserved

Part C

Vermont Rules

Governing Services

to Children

Birth up to Age Three

Page left blank intentionally

Part C of the Individuals with Disabilities Education Act (IDEA)

Serving Children from Birth Up to Age Three

2360.5 Part C Early Intervention Services

In Vermont, Part C of IDEA is referred to as Children's Integrated Services/Early Intervention (CIS/EI) and is responsible for the provision of early intervention services for eligible children birth up to their third birthday. Part B of IDEA requires LEAs to provide FAPE to eligible children and students from their third birthday through twenty-one years of age, whereas Part C of IDEA does not require the provision of FAPE. The Agency of Education (AOE) and the Agency of Human Services (AHS) serve as co-lead agencies in Vermont for the implementation of early intervention services under Part C of IDEA.

2360.5.1 Part C and CIS/EI Definitions

- (a) The following definitions apply to Vermont CIS/EI for use in implementing the State's early intervention program:
- (1) **Child** means an individual under the age of six.
 - (2) **CIS/EI**, the acronym for Children's Integrated Services/Early Intervention (CIS/EI), provides services under Part C of IDEA and is a federally mandated system of early intervention services for children birth up to age three with developmental delays or medical conditions that may lead to developmental delays.
 - (3) **Consent** means:
 - (i) Parent(s) has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language;
 - (ii) Parent(s) understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought, and the consent form describes that activity and lists the early intervention records (if any) that will be released and to whom they will be released;

- (iii) Parent(s) understands that the granting of consent is voluntary on the part of the parent, and may be revoked at any time; and
 - (iv) If a parent revokes consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked).
- (4) **Day** means calendar day, unless otherwise indicated.
- (5) **Developmental Delay** is defined as an observable and measurable delay as determined by state approved diagnostic instruments, other appropriate measures including observations, medical records or other records deemed necessary and procedures, emphasizing the use of informed clinical opinion. The delay must be defined in one or more of the following areas: cognitive; communication; adaptive; physical, including vision and hearing; and social or emotional development.
- (6) **Essential Early Education (EEE)** is IDEA Part B Early Childhood Special Education services for children ages three up to six. Special education and related services are provided by LEAs to ensure children receive age appropriate services within inclusive early childhood settings, including the child's home, to the extent possible.
- (7) **Evaluation of the Child and Assessment of the Child and Family:**
 - (i) **Evaluations** are procedures used by qualified personnel to determine a child's initial and continuing eligibility under these Rules, consistent with the definition of child with a disability.
 - (ii) **Initial Evaluation** determines a child's initial eligibility for Part C services and must be completed within the 45 day timeline from date of referral.
 - (iii) **Assessment** is an ongoing process, by qualified personnel, to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs throughout the period of the child's eligibility.
- (8) **Early Intervention Records** are records pertaining to a child receiving services that are required to be collected and maintained pursuant to IDEA Part C.

- (9) **Early Intervention Services** are developmental services provided to a child with a disability that:
- (i) Are provided under public supervision;
 - (ii) Are selected in collaboration with the parents;
 - (iii) Are provided at no cost, except where the system of payments policy includes fees;
 - (iv) Are designed to meet the developmental needs of a child with a disability and the needs of the family to assist appropriately in the child's development as identified in the following areas: physical, cognitive, communication, social, emotional or adaptive development;
 - (v) Meet the standards of the State in which the early intervention services are provided, including the requirements of Part C of the IDEA;
 - (vi) Are provided by qualified personnel;
 - (vii) Are provided in natural environments to the maximum extent appropriate; and
 - (viii) Are provided in accordance with the IFSP/One Plan as defined in these Rules.
- (10) **Early Intervention Service Provider** is referred to as "provider," in these rules and means an entity (whether public, private, or nonprofit) or an individual that provides services under Part C of the IDEA, whether or not the entity or individual receives federal funds under Part C of the IDEA.
- (11) **Educational Surrogate Parent** is an individual appointed by the AOE to ensure the rights of the child and student are protected when:
- (i) The parents of the child or student are not known or cannot be located after reasonable efforts;
 - (ii) The child or student in state custody through the Department of Children and Families or has a public guardian appointed by a Vermont court (18 VSA §9301-9316); or
 - (iii) The child or student is an unaccompanied homeless youth as defined in §725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)) (34 CFR §300.519(a)(4))

- (12) **Individualized Family Service Plan (IFSP/One Plan)** is a written plan for providing early intervention services to a child with a disability and the child's family that:
- (i) Is based on evaluation and assessment results;
 - (ii) Includes content required as described in these Rules;
 - (iii) Is implemented as soon as possible once parental consent for the early intervention services in the IFSP is obtained; and
 - (iv) Is developed in accordance with the IFSP procedures set forth in Rule 2360.5.6.

One Plan refers to Vermont's revised IFSP and meets all IDEA Part C requirements.

- (13) **Informed Clinical Opinion** makes use of qualitative and quantitative information to assist in forming a determination regarding difficult-to-measure aspects of current developmental status and the potential need for early intervention. Qualified personnel must use informed clinical opinion when conducting an evaluation and assessment of the child in order to make a recommendation as to initial and continuing eligibility for services under Part C and as a basis for planning services to meet child and family needs.

- (14) **Method, Length, Frequency and Intensity, and Duration:**

- (i) Method means how a service is provided (i.e., whether the service is provided through consultation, family education, and/or direct service);
- (ii) Length means the length of time the service is provided during each session of that service (such as an hour or other specified time period);
- (iii) Frequency and intensity means the number of days or sessions that a service will be provided, and whether the service is provided on an individual or group basis; and
- (iv) Duration means projecting when a given service will no longer be needed (such as when the child is expected to achieve the results or outcomes in his or her IFSP/One Plan).

- (15) **Multidisciplinary** is the involvement of two or more separate disciplines or professions with respect to:

- (i) Evaluation of the child and assessments of the child and family may include one individual who is qualified in more than one discipline or profession; and
- (ii) Multidisciplinary IFSP/One Plan Team must include the involvement of the parent and two or more individuals from separate disciplines or professions, one of whom must be the Service Coordinator.

(16) **Native Language** with respect to an individual who has limited English proficiency, means:

- (i) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child; and
- (ii) For evaluations and assessments conducted, the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.

Native language, when used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, means the mode of communication that is normally used by the individual (such as sign language, Braille, or oral communication).

(17) **Natural Environments** are settings that are typical for a same aged child without a disability and may include the home or community settings.

(18) **Parent** means:

- (i) A biological or adoptive parent of a child or student; when attempting to act as the parent and when more than one party is qualified to act as a parent, must be presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational or early intervention services decisions for the child or student;
- (ii) A foster parent, or developmental home provider who has been appointed the educational surrogate parent by the Vermont Educational Surrogate Parent Program; or
- (iii) A guardian generally authorized to act as the child's or student's parent, or authorized to make early intervention, education, health or developmental

decisions for the child or student (but not the State if the child or student is a ward of the State);

- (iv) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child or student lives, or an individual who is legally responsible for the child or student's welfare;
- (v) An educational surrogate parent who has been appointed by the Agency of Education; or
- (vi) If a judicial decree or order identifies a specific individual to act as the "parent" of a child or student or to make educational decisions on behalf of a child or student, then such individual shall be determined to be the "parent" for purposes of this section, except that the LEA that provides education or care for the child or student may not act as the parent.

(19) **Personally Identifiable Information** is information that includes:

- (i) The name of the child, the child's parent or other family member;
- (ii) The address of the child;
- (iii) A personal identifier, such as the child's or parent's social security number; or
- (iv) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty, such as the child's date of birth or disability.

(20) **Qualified Personnel** are individuals who have met State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the areas in which the individuals are conducting evaluations or assessments or providing early intervention services. Vermont State approved early interventionists shall hold at least a bachelors' degree in early childhood or a related field and meet any other current requirements.

(21) **Screening** is a process using State approved screening tools and appropriate methods implemented by qualified personnel and/or primary referral source to identify, at the earliest possible age, a child suspected of having a developmental delay and/or disability and in need of an initial evaluation.

- (22) **Service Coordination** is a service provided by a Service Coordinator to assist a child and the child's family to receive early intervention services and parental rights. Each eligible child and the child's family must be provided with a Service Coordinator who is responsible for coordinating all services across agency lines and serving as the single point of contact in helping parents to obtain the services and assistance they need.

Service coordination is an active, ongoing process that involves:

- (i) Assisting parents of eligible children in gaining access to, and coordinating the provision of the early intervention services; and,
- (ii) Coordinating other services identified in the IFSP/One Plan that are needed by, or being provided to, the child with a disability and their family.

Specific Service Coordination activities include:

- (i) Conducting the family assessment, including interviewing the family;
- (ii) Collecting information on the child's development, including observations of the child;
- (iii) Assisting parents of eligible children in obtaining access to needed early intervention services and other services identified in the IFSP/One Plan, including making referrals to providers for needed services and scheduling appointments for eligible children and their families;
- (iv) Coordinating the provision of early intervention services and other services (such as educational, social, and medical services that are not provided for diagnostic or evaluative purposes) that the child needs or is being provided;
- (v) Coordinating evaluations and assessments;
- (vi) Facilitating and participating in the development, review, and evaluation of IFSP/One Plans;
- (vii) Conducting referral and other activities to assist families in identifying available providers;
- (viii) Coordinating, facilitating, and monitoring the delivery of services to ensure that the services are provided in a timely manner;
- (ix) Conducting follow up activities to determine that appropriate Part C services are being provided;
- (x) Informing families of their parental rights, and related resources;
- (xi) Coordinating the funding sources for services; and

- (xii) Facilitating the development of a transition plan to EEE or, if appropriate, to other services.

(23) **Specialized Instruction** is defined as:

- (i) The designing of learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;
- (ii) Curriculum and intervention planning, including the planned interaction of personnel, materials, time and space that leads to achieving the outcomes in the IFSP/One Plan;
- (iii) Providing families with information, skills, and support related to enhancing the development of the child; and
- (iv) Working with the child to enhance the child's development.

(24) **Ward of the State** is a child who, as determined by the State where the child resides, is:

- (i) A foster child, unless the child has a foster parent who meets the definition of a parent.
- (ii) A ward of the State; or
- (iii) In the custody of a public child welfare agency.

2360.5.2 Public Awareness and Child Find (CFR §303.300-303.303; 303.311)

- (a) By way of the Vermont Part C Interagency Agreement for the provision of Early Intervention Services, the role and responsibilities of regional CIS/EI programs and LEAs shall be detailed and maintained in a regional agreement. LEAs shall act as a primary referral source and participating partner to ensure the provision of early intervention services under IDEA Part C. Each regional CIS/EI program shall serve as the central point of referral for children ages birth up to three years of age who may require early intervention services.
 - (1) Vermont's comprehensive Part C Child Find system includes policies and procedures that are coordinated with all other major efforts to locate and identify children by other

State agencies responsible for administering the various health, social service programs and education to ensure all children who may be eligible for services under Part C are identified, located and evaluated including:

- (i) Native American children residing on a reservation geographically located in the State; and
 - (ii) Children who are homeless, in foster care or wards of the State; and
 - (iii) Children who are the subject of a substantiated case of child abuse or neglect; or identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug or alcohol exposure.
- (2) Regional CIS/EI programs and LEAs shall engage in public awareness and Child Find activities to identify children and their families who may be in need of early intervention services. Regional CIS/EI programs shall prepare, describe and disseminate materials and information for parents on the availability of early intervention services to all primary referral sources, especially hospitals and physicians.
- (3) Vermont's comprehensive referral procedures ensure all children who may be eligible for early intervention services are referred as soon as possible, **but in no case more than 7 days** after the child has been identified for referral. Primary referral sources include but are not limited to:
- (i) Hospitals, including prenatal and postnatal care facilities;
 - (ii) Physicians;
 - (iii) Parents;
 - (iv) Childcare programs and early learning programs;
 - (v) Local Education Agencies (LEA) Child Find efforts are coordinated between regional CIS/EI programs and LEAs so that:
 - (A) Each LEA shall act as a primary referral source to locate and screen children who may be suspected of having a developmental delay and/or disability and in need of an initial evaluation to determine eligibility for Part C services. Based on screening results, children who are found to be typically developing do not require a referral for an initial evaluation;
 - (B) LEAs may employ specific elements of screening;

- (C) LEAs shall notify local CIS/EI programs of all children who may be in need of an initial comprehensive multidisciplinary evaluation for eligibility under Part C;
 - (vi) Public health facilities and social service agencies;
 - (vii) Other clinic and health care providers;
 - (viii) Public agencies and staff in the child welfare system including child protection agencies and foster care services and providers;
 - (ix) Homeless family shelters; and
 - (x) Domestic violence shelters and agencies.
- (4) Specific referral procedures shall be followed for at-risk children who have been identified as the subject of a substantiated case of child abuse or neglect; or is identified as directly affected by illegal substance or alcohol abuse or withdrawal symptoms resulting from prenatal exposure. (CRF 303.303(b))

2360.5.3 Screening (CFR §303.320, 303.421, 303.420(a)(1))

- (a) As co-lead agencies, AOE and AHS have adopted procedures outlined in the Part C Interagency Agreement and are specified in regional CIS/EI and LEA agreements, to conduct screenings for children under the age of three suspected of having a disability and may be in need of early intervention services. For children with established diagnosed conditions set forth in §2360.5.5(a)(2) screening is not necessary because records establish that the child has a disability and is eligible for Part C services. For children undergoing the screening process, and based on regional agreements, the following must occur:
 - (1) Provide the parent notice of the intent to screen the child to identify whether the child is suspected of having a disability and include in that notice a description of the parent's right to request an initial evaluation at any time during the screening process;
 - (2) Parental consent is obtained prior to conducting screening; and
 - (3) Notice must be provided to the parent if the screening or other available information indicates the child is suspected of having a disability.
- (b) The 45 day timeline begins upon receipt of referral to the regional CIS/EI program. CIS/EI must appoint a service coordinator and contact the family within two working days of

referral.

- (c) CIS/EI will review and/or conduct a screening, and if warranted, an initial evaluation of the child and assessment of the child and family. The IFSP/One Plan meeting must be held within 45 days from the date the regional CIS/EI program receives the referral for the child.
- (d) If the child is not suspected of having a disability, the CIS/EI provider must ensure that written notice of that determination is provided to the parent, and that the written notice describes the parent's right to request an evaluation.
- (e) If the parent of the child requests and consents to an evaluation at any time during the screening process, evaluation of the child must be conducted, even if the CIS/EI provider has determined that the child is not suspected of having a disability.
- (f) Screening procedures are activities that are jointly developed in regional agreements and carried out by the regional CIS/EI provider and/or LEA to identify, at the earliest possible age, a child suspected of having a disability and in need of early intervention services; and include the administration of State approved screening tools and methods by qualified personnel.
- (g) Condition for Evaluation or Early Intervention Services: For every child under the age of three referred to the regional CIS/EI program or screened in accordance with this section, CIS/EI will:
 - (1) Provide an evaluation for any child suspected of having a disability or if the parent requests an evaluation even if the child is not suspected of having a disability, and/or
 - (2) Offer early intervention services to any child who meets the State definition of a child with a disability.

2360.5.4 Evaluation of the Child and Assessment of the Child and Family (34 CFR 303.321)

- (a) CIS/EI must ensure that, subject to obtaining written parental consent, each child under the age of three referred for evaluation or early intervention services and suspected of having a disability, receives:

- (1) An eligibility determination based on a timely, comprehensive, multidisciplinary evaluation for initial and/or on-going eligibility and that no single procedure is used as the sole criterion for determining a child's eligibility; or
 - (2) An eligibility determination based on the child's medical and other records, if those records indicate that the child's level of functioning in one or more of the developmental areas constitutes an observable and measurable developmental delay, and as a result, the child is determined eligible as a child with a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay.
- (b) Once the child's eligibility has been established through an initial evaluation of the child and/or through the use of medical or other records, the initial assessment of the child must be conducted by qualified personnel so that the child receives:
- (1) A multidisciplinary assessment of the unique strengths and needs of the child and the identification of services appropriate to meet those needs;
 - (2) A voluntary family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the child. The assessments of the child and family may occur simultaneously with the evaluation to determine initial and/or continuing eligibility and services appropriate to meet the child's needs.
- (c) Requirements of Evaluations and Assessments:
- (1) Evaluation means the procedures used by qualified personnel to determine a child's initial and continuing eligibility. An initial evaluation refers to the child's evaluation to determine his or her initial eligibility;
 - (2) Assessment means the ongoing procedures used by qualified personnel to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs throughout the period of the child's eligibility and includes the assessment of the child, and the assessment of the child's family. Initial assessment refers to the assessment of the child and the family assessment conducted prior to the child's first IFSP/One Plan meeting.

- (3) All evaluations and assessments of the child and family must be conducted by qualified personnel in a nondiscriminatory manner and selected and administered so as not to be racially or culturally discriminatory.
- (4) All evaluations and assessments of a child and family must be conducted in the native language of the child and family members being assessed, unless it is clearly not feasible to do so.
- (5) Qualified personnel must use informed clinical opinion when conducting an evaluation and assessment of the child. In addition, the regional CIS/EI programs must ensure that informed clinical opinion may be used as an independent basis to establish a child's eligibility under this part even when other instruments do not establish eligibility; however, in no event may informed clinical opinion be used to negate the results of evaluation instruments used to establish eligibility.

2360.5.4.1 Procedures for Evaluation of the Child

- (a) An evaluation of the child must be conducted by qualified personnel in a nondiscriminatory manner, selected and administered so as not to be racially or culturally discriminatory in order to determine the child's initial or continuing eligibility. In conducting a multidisciplinary evaluation, no single procedure may be used as the sole criterion for determining a child's eligibility under this part.
 - (1) The evaluation of the child must include the following:
 - (i) Administering a State approved diagnostic instrument;
 - (ii) Documenting the child's history (including interviewing the parent);
 - (iii) Identifying the child's level of functioning in each of the developmental areas;
 - (iv) Gathering information from other sources such as family members, other caregivers, medical providers, social workers, and educators, if necessary, to understand the full scope of the child's unique strengths and needs; and
 - (v) Reviewing medical, educational, or other records.

2360.5.4.2 Procedures for Initial and Ongoing Assessment of the Child

An assessment of each child with a disability must be conducted by qualified personnel in order to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs. The assessment of the child must include the following:

- (a) A review of the results of the evaluation conducted;

- (b) Personal observations of the child; and
- (c) An identification of the child's functional needs in each of the developmental areas.

2360.5.4.3 Procedures for Assessment of the Family

A family-directed assessment must be conducted by qualified personnel in order to identify the family's resources, priorities, and concerns and the supports and services necessary to enhance the family's capacity to meet the developmental needs of the family's child with a disability.

The family-directed assessment must:

- (a) Be voluntary on the part of each family member participating in the assessment;
- (b) Be based on information obtained through an assessment tool and also through a routines based interview with those family members who elect to participate in the assessment; and
- (c) Include the family's description of its resources, priorities, and concerns related to enhancing the child's development.

2360.5.5 Eligibility (34 CFR §303.21)

- (a) Child with a disability means a child under three years of age who needs early intervention services because:
 - (1) The child is experiencing an observable and measurable developmental delay, as measured by State approved diagnostic instruments and procedures, in one or more of the following areas:
 - (i) Cognitive development;
 - (ii) Physical development, including vision and hearing;
 - (iii) Communication development;
 - (iv) Social or emotional development;
 - (v) Adaptive development;
 - (2) The child has a diagnosed physical or mental condition that:
 - (i) Has a high probability of resulting in developmental delay; and
 - (ii) Includes conditions such as, but are not limited to, chromosomal abnormalities; genetic or congenital disorders; sensory impairments; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; severe attachment disorders; disorders secondary to exposure to toxic substances, including fetal alcohol syndrome; and severe

complications at birth.

- (b) For the purposes of this part, **‘developmental delay’** is defined as a clearly observable and measurable delay in one or more of developmental areas (as stated above) and the delayed development shall be at the level that the child’s future success in home, school or community cannot be assured without the provision of early intervention services.
- (c) **Eligibility Determination**
 - (1) A CIS/EI multidisciplinary team, including parents, shall determine a child’s eligibility to receive early intervention services.
 - (2) The child’s file or IFSP/One Plan shall clearly document participants involved and the evaluation and procedures used to inform the eligibility determination and provision of early intervention services.
- (d) **Intrastate and Interstate Transfer Eligibility**
 - (1) A child determined eligible for early intervention services in one CIS/EI region who relocates to another CIS/EI region continues to be eligible for services without need for another evaluation or determination of eligibility.
 - (2) For a child who relocates to Vermont from another State and who has previously been found eligible to receive early intervention services in that State, the regional CIS/EI team shall review Part C eligibility requirements from the sending State as well as any records forwarded to the regional CIS/EI program in order to determine if the child may be eligible under Vermont’s Part C eligibility requirements. If additional evaluations are warranted to determine the child’s eligibility in Vermont, written parental consent must be obtained prior to any evaluations being conducted.
- (e) **Determination that a Child is Not Eligible**

If, based on the initial evaluation, the regional CIS/EI team determines that a child is not eligible under this part, the regional CIS/EI team must provide the parent with prior written notice regarding this determination, and include in the notice information about the parent’s right to dispute the eligibility determination through dispute resolution mechanisms under Rule 2365.

2360.5.6 Individualized Family Service Plan (IFSP)/One Plan

(34 CFR 303.340-303.346)

The regional CIS Early Intervention programs shall ensure the development, review, and implementation of an IFSP/One Plan. The plan shall be developed by a multidisciplinary team, which includes the parent for each eligible child. Changes or revisions to the plan must be a team decision.

2360.5.6.1 IFSP/One Plan Meetings and Reviews

- (a) For a child referred to and subsequently found eligible for the Part C program, a meeting to develop the initial IFSP/One Plan must be conducted within 45 days of receipt of the initial referral to Part C.
- (b) On at least an annual basis, a meeting shall be conducted to evaluate and revise as appropriate, the IFSP/One Plan for the child and the child's family. The results of any current evaluation and other information available from the assessments of the child and family shall be used in determining the early intervention services that are needed and will be provided.
- (c) A periodic review of the IFSP/One Plan for a child and the child's family shall occur at least every six months, or more frequently if needed, or requested by the family. The six month review need not take place at a formal meeting but may occur through other means that are acceptable to the parents and other participants. The purpose of the six month review is to determine:
 - (1) Progress made toward achieving the outcomes identified in the IFSP/One Plan, and
 - (2) Whether modification or revision of the outcomes or services is needed.
- (d) IFSP/One Plan meetings shall be:
 - (1) Held at least annually;
 - (2) Held in settings and at times that are accessible and convenient for families;
 - (3) Held in the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so;
 - (4) Arranged with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend;
 - (5) Attended at minimum by:
 - (i) The parent(s) of the child, and
 - (ii) The service coordinator.

- (6) Also attended by or otherwise include the participation of:
 - (i) Other family members, as requested by the family;
 - (ii) An advocate or person outside the family as requested by the family;
 - (iii) The person(s) directly involved in the evaluation and assessment process; and
 - (iv) As appropriate, the person(s) who will be providing services to the child and/or the family.
- (7) Participation may include:
 - (i) Sharing information through a telephone call and making pertinent records available; and
 - (ii) Having a knowledgeable authorized representative attend the meeting.

2360.5.6.2 Contents of IFSP/One Plan

The contents of the IFSP/One Plan shall be fully explained to parents and shall include the following:

- (a) A statement of the child's present levels of physical development (including vision, hearing, and health status), cognitive development, communication development, social or emotional development, and adaptive development based upon the information from that child's evaluation, assessments, and other relevant records.
- (b) With the concurrence of the family, a statement of the family's resources, priorities, and concerns related to enhancing the development of the child as identified through the assessment of the family;
- (c) A statement of the measurable results or measurable outcomes expected to be achieved for the child (including pre and early literacy and language skills, as developmentally appropriate for the child) and family; and the criteria, procedures, and timelines used to determine:
 - (1) The degree to which progress toward achieving the outcomes identified in the IFSP/One Plan is being made; and
 - (2) Whether modifications or revisions of the expected outcomes, or services identified in the IFSP/One Plan are necessary.

- (d) A statement of the specific early intervention services, based on peer reviewed research (to the extent practicable), that are necessary to meet the unique needs of the child and the family to achieve the results or outcomes, including the:
 - (1) Method of how a service is provided (i.e., whether the service is provided through consultation, family education, and/or direct service);
 - (2) Length of time the service is provided during each session of that service (such as an hour or other specified time period);
 - (3) Frequency and intensity (i.e., the number of days and/or sessions that a service will be provided and whether the service is provided on an individual or group basis); and
 - (4) Projection of the duration of a given service (such as when the child is expected to achieve desired outcomes as stated on his or her IFSP/One Plan).
- (e) A statement that each early intervention service shall be provided in the natural environment, to the maximum extent appropriate for the child. If early intervention services cannot be provided within the natural environment for the child, the IFSP/One Plan team (which includes the parent and other team members) shall make a determination of the appropriate setting and include a justification for not providing services within the natural environment.
- (f) The location of services (the actual place or places where a service will be provided);
- (g) The payment arrangements, if any;
- (h) Other services needed, but not required by Part C of the IDEA. To the extent appropriate, the IFSP/One Plan must:
 - (1) Identify medical and other services that the child or family needs or is receiving through other sources, but that are not required nor funded by Part C of the IDEA; and
 - (2) If those services are not currently being provided, include a description of the steps the Service Coordinator or family may take to assist the child and family in securing those other services;
- (i) The projected dates for initiation of each early intervention service, which shall be as soon as possible after the parent consents to that service, and not more than 30 days from receipt of written consent by CIS/EI;

- (j) The anticipated duration of each early intervention service;
- (k) The name of the Service Coordinator responsible for implementing the early intervention services identified in the child's IFSP/One Plan, including transition services, and coordination with other agencies and persons;
- (l) The steps and services to be taken to support the transition of the child from regional CIS/EI services to Part B EEE services to the extent that those services are appropriate, or to other appropriate services (e.g., early childhood community based settings and services, etc.). The steps for transition must include:
 - (1) Discussions with, and training of, parents, as appropriate, regarding future placements and other matters related to the child's transition;
 - (2) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting;
 - (3) Confirmation that Child Find information about the child has been transmitted to the LEA and the State CIS/EI office for transmission to the AOE;
 - (4) With written parental consent, transmission of other information about the child to the LEA, to ensure continuity of services, including a copy of the most recent evaluation and assessments of the child and family and the most recent IFSP/One Plan; and
 - (5) Identification of transition services and other activities that the IFSP/One Plan team determines are necessary to support the transition of the child.

2360.5.6.3 Interim IFSP/One Plan Provision of Services Before Evaluation and Assessment Completion (34 CFR 303.345)

- (a) Early intervention services for an eligible child and the child's family may begin before the completion of the initial evaluation and assessment if the following conditions are met:
 - (1) Informed, written parental consent is obtained;
 - (2) An interim IFSP/One Plan is developed that includes:
 - (i) The name of the Service Coordinator who will be responsible for implementing the interim IFSP/One Plan and coordinating with other agencies and persons; and
 - (ii) The early intervention services that have been determined to be needed immediately by the child and the child's family; and

- (3) The initial evaluation and assessment and IFSP/One Plan meeting are completed within 45 days of referral.

2360.5.6.4 Responsibility and Accountability (34 CFR 303.346)

Each participating agency that has a direct role in the provision of early intervention services is responsible for making a good faith effort to assist each eligible child in achieving the outcomes in the child's IFSP/One Plan. However, Part C of the IDEA does not require that any participating agency be held accountable if an eligible child does not achieve the growth projected in the child's IFSP/One Plan.

2360.5.7 Notifications of Transition at Age Three (CFR §303.209)

AOE and AHS have developed policies and procedures that are also included in the Part C Interagency Agreement to ensure a smooth and effective transition for children with disabilities and their families who transition from Part C services to Part B services at age three.

- (a) **Regional CIS/EI Notification to LEA of Children Potentially Eligible for EEE at Age Three:**
Between six months and ninety days before the child's third birthday, the regional CIS/EI program will provide written notification (child's name, date of birth, and parent name, address, and telephone number) to the LEA where the child resides that the child on his/her third birthday will reach the age of eligibility for services under IDEA Part B and the IFSP/One Plan team has determined the child is 'potentially eligible' for Essential Early Education (EEE) services.
 - (1) Potentially Eligible, for the purposes of transition at age three, is determined by the IFSP/One Plan team within six months of a child's third birthday. Evidence is based on on-going assessment measures and use of a State approved diagnostic instrument. A child shall be considered potentially eligible for EEE services if the child demonstrates at least a 25% delay in one or more of the following developmental domains:
 - (i) Speech and language development (receptive and/or expressive communication; including articulation, fluency and/or voice);
 - (ii) Adaptive development;
 - (iii) Social or emotional development;
 - (iv) Physical development including gross or fine motor skills; and/or
 - (v) Cognitive skills such as perception, memory, processing and reasoning.

- (b) Regional CIS/EI Notification to Part C State Office: Between six months and ninety days before the child's third birthday, the regional CIS/EI program will provide written notification (child's name, date of birth, and parent name, address, and telephone number) to the Part C State office only for children who are receiving Part C services and who may be potentially eligible for services under Part B.
- (c) Part C State Notification: Between six months and not fewer than ninety days before the child's third birthday, the Part C State office will provide written notification (child's name, date of birth, and parent name, address, and telephone number) to the AOE for children who are receiving Part C services and who are considered potentially eligible for services under Part B. The Part C State office will report this information monthly to the AOE.

2360.5.8 Late Referral Procedures

- (a) If the regional CIS/EI program determines that a child is eligible for early intervention services *more than 45 days but fewer than 90 days* before that child's third birthday the regional CIS/EI must provide transition notification to the LEA where the child resides as soon as possible.
- (b) If the regional CIS/EI program determines that a child is eligible for early intervention services *more than 45 days but fewer than 90 days* before that child's third birthday the regional CIS/EI must provide transition notification as soon as possible to the Part C State office after determining eligibility.
- (c) The Part C State office will provide written notification as soon as possible to the AOE for all children determined eligible for early intervention services *more than 45 days but fewer than 90 days* before their third birthday.
- (d) If a child is referred to the regional CIS/EI program *fewer than 45 days* before their third birthday, the regional CIS/EI program is not required to conduct an initial evaluation, assessment or initial IFSP meeting. If that child may be potentially eligible for Part B services, the regional CIS/EI, with parental consent, must refer the child to the LEA where the child resides.

- (e) If a child is referred to the regional CIS/EI program *fewer than 45 days* before his/her third birthday and may be potentially eligible for Part B services, the regional CIS/EI program must notify, with parental consent, the Part C State office, LEA, and AOE as soon as possible.
- (f) With parental consent, the Part C State office will provide written notification as soon as possible to the AOE for all children referred *fewer than 45 days* before their third birthday and who may be potentially eligible for Part B services.

2360.5.9 Transition Conference (CFR §303.209 (c) (d))

- (a) The AOE and AHS shall ensure that regional CIS/EI and LEA representatives participate in transition planning conferences for those children who are considered potentially eligible for Part B EEE services at age three.
 - (1) With family approval, the regional CIS/EI shall conduct a transition conference for a child with disabilities who is receiving Part C services and who will be exiting the Part C program not fewer than ninety days, and at the discretion of all parties not more than nine months, before the child's third birthday to discuss any services the child may receive under Part B EEE services.
 - (2) Prior to or at the transition conference, families will be provided information about parental rights and procedural safeguards for Part B.
 - (3) If a child is not potentially eligible for Part B EEE services, with the family's approval, the regional CIS/EI program shall make reasonable efforts to convene a conference with the family and community-based providers to discuss other appropriate services that the child may receive.
 - (4) The transition conference must include the regional CIS/EI IFSP/One Plan providers, the family of the child and an LEA representative.
 - (5) The transition conference or meeting to develop the transition plan must meet the IFSP/One Plan meeting requirements and that the transition conference and the IFSP/One Plan meeting may be combined.
- (b) Procedures for Transition Plan:

AOE and AHS shall ensure that regional CIS/EI and LEA representatives participate in transition planning conferences for children who may be potentially eligible for Part B EEE

services. The family's service coordinator is responsible for initiating and scheduling the transition planning conference.

- (1) IFSP/One Plan team, inclusive of the family, shall develop the transition plan and include steps and services to be taken to support the smooth transition of the child from Part C to Part B.
- (2) The IFSP/One Plan team shall develop a transition plan, as part of a child's IFSP/One Plan, not fewer than ninety days, but at the discretion of all parties up to nine months, prior to the third birthday for all children exiting Part C. The transition plan shall include the following steps and services:
 - (i) A review of program options for the child for the period from the child's third birthday through the remainder of the school year;
 - (ii) Discussion with and training of parents, as appropriate, regarding future options and other matters related to the child's transition;
 - (iii) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to and function in a new setting;
 - (iv) Identification of transition services and other activities that the IFSP/One Plan Team determines are necessary to support the transition of the child.

2360.5.10 Eligibility for EEE Services at Age Three

- (a) In order to ensure a seamless and effective transition for children with disabilities who receive Part C services and are potentially eligible for Part B services, the AOE will ensure that the LEA provides each child entering Part B EEE services from Part C services an Individualized Education Plan (IEP) developed and implemented by the child's third birthday. The IEP shall include all required components as listed in Rule 2363.7.
- (b) If a child's birthday occurs during the summer, the child's IEP team shall develop the IEP prior to the end of the current school year in order to have the IEP in effect at the beginning of the new school year. If it is necessary for the child to receive uninterrupted services over the summer months, the IEP team shall determine the date when services begin.
- (c) A child shall be eligible for EEE services at age three, if the child received consistent (e.g., one 60 minute intervention session per week) specialized instruction, developmental therapy services or speech and language services through an IFSP/One Plan and the child:

- (1) Demonstrates a 25% developmental delay, as measured by ongoing assessment and use of a State approved diagnostic instrument, administered by qualified professionals, in one or more of the following developmental domains:
 - (i) Speech and language development (receptive and/or expressive communication; including articulation, fluency and/or voice);
 - (ii) Adaptive development;
 - (iii) Social or emotional development;
 - (iv) Physical development, including gross or fine motor skills; and/or
 - (v) Cognitive skills such as perception, memory, processing and reasoning; or
 - (2) The child has a medical condition which may result in significant delays by the child's sixth birthday, and the school based Evaluation Planning Team (EPT) has determined that the child is in need of Part B EEE services.
- (d) For the purposes of this section, "medical condition" means a condition diagnosed by a licensed physician such as but not limited to autism, cerebral palsy, Down syndrome, attention deficit disorder with hyperactivity that may result in significant delays by the child's sixth birthday.
- (e) If the child previously received Part C services, a meeting notice of the initial IEP meeting will be sent to the CIS/EI Part C service coordinator, or other CIS/EI service representative at the request of the parent.
- (f) For all children who transition from CIS/EI Part C services to Part B EEE services, the IEP team must consider the IFSP/One Plan content when developing the initial IEP (including the natural environments statement).

2360.5.10.1 Part C Records Forwarded to LEA:

Within ninety days of the child's third birthday and with parental consent, copies of the following IFSP/One Plan records shall be sent to the LEA where the child resides:

- (a) A signed consent from the parent to release identifying information to the LEA;

- (b) Evaluation and procedures used to determine child's potential eligibility for Part B EEE services;
- (c) IFSP/One Plans;
- (d) Pertinent ongoing assessment reports and contact notes.

2360.5.10.2 Consent for Part B Placement and the Initial Provision of Part B Services

For children who transition to Part B EEE services, the parent shall be asked to sign consent for:

- (a) Their child's placement under Part B for the period of time between the age of three and the date the initial evaluation under Part B is completed.
 - (1) The initial consent for evaluation and placement under Part B shall occur when the child's initial evaluation under Part C expires after 3 years or sooner if requested by the parent or LEA.
- (b) Consent for the initial provision of IEP services.

2360.6 Records

- (a) Children's Integrated Services/Early Intervention (CIS/EI) records shall be the property of the co-lead agencies, the AOE and AHS. The child's record at the CIS/EI Program shall be the central record for children referred for early intervention services. Records at the CIS Early Intervention Program shall contain the following:
 - (1) Record of Access;
 - (2) Consents for Release of Information;
 - (3) Consent for Evaluation;
 - (4) Documentation that parental rights have been given in writing and explained;
 - (5) Evaluation reports or summaries used to determine eligibility;
 - (6) Eligibility form;
 - (7) Written notice of IFSP/One Plan meetings;
 - (8) All of the child's IFSPs/One Plans;
 - (9) Information related to IFSP/One Plan reviews; and
 - (10) Information related to transition planning.
- (b) Additional components of the child's record (e.g., summary reports, on-going assessment, evaluation summary, etc.) may be maintained by service providers and copies must be provided to regional CIS/EI Program as part of the child's permanent record.

2360.7 Procedural Safeguards.

If a parent disagrees with the decisions made by the IFSP/One Plan team the parent may pursue any of the dispute resolution options set forth in Rule 2365.

PART B

Vermont Rules Governing

Services to Children

Ages Three through Twenty-one

Page left blank intentionally

Part B of the Individuals with Disabilities Education Act (IDEA)

Serving Children and Students Ages Three through Twenty-one

2361 Part B – Serving Children/Students Ages Three Through Twenty-One:

IDEA Part B in Vermont is categorized into two distinct age groups. Children ages three through age five are served through Essential Early Education (EEE). The second age group, ages six through twenty-one, are students served through the local education agency where the student resides.

2361.1 Part B Definitions

The following definitions shall apply to terminology used throughout Part B of these Rules:

- (1) **Accommodations.** Accommodations means those evaluation procedures, curricula, materials or programmatic adaptations, behavior management interventions, and supplemental aids and services that are necessary for an eligible student to benefit from his or her general education or to participate in non-academic or extra-curricular activities.
- (2) **Adaptive behavior skills.** Adaptive behavior skills are the skills essential to independent functioning, personal responsibility, and social responsibility.
- (3) **Assistive Technology device.** Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.
- (4) **Assistive technology service.** Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:
 - (i) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
 - (ii) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

- (iii) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
 - (iv) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
 - (v) Training or technical assistance for a child with a disability and/or, if appropriate, that child's family; and
 - (vi) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, and/or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.
- (5) **Basic skills.** Basic skills are those skills enumerated in Rule 2362(g).
- (6) **Child.** Child means an individual under the age of six and may include an infant or toddler ages birth to three with a disability
- (7) **Child in state custody.** A “child in state custody” means a child placed in custody pursuant to Chapters 49 and 55 of Title 33. A “child in state custody” shall be afforded all rights and protections as a “ward of the State” as provided in 20 U.S.C. § 1401(36).
- (8) **Child with a disability.** In this document, “child with a disability” is a child who has been found eligible for special education and related services consistent with the process found in Rules 2361 and 2362.
- (9) **Consent.** Consent means that—
- (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
 - (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

- (c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.
 - (d) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).
- (10) **Core curriculum.** Core curriculum means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography which have instructional approaches that are based on scientifically validated research supporting the curriculum's effectiveness and demonstrate a high probability of success for a majority of students.
- (11) **Day.** Whenever a limit of "days" appears within these regulations, the following definitions shall apply:
- (a) "Day" is defined as a calendar day, unless stated to be "business day" or "school day".
 - (b) "Business day" means weekdays, excluding Federal and State holidays, unless the latter are specifically included.
 - (c) "School day" means any day, including partial days, when children attend school for instructional purposes. The term school day has the same meaning for all children in school, including children with and without disabilities.
- (12) **Educational Surrogate Parent** is an individual appointed by the AOE to ensure the rights of the child and student are protected when:
- (i) The parents of the child or student are not known or cannot be located after reasonable efforts;
 - (ii) The child or student in state custody through the Department of Children and Families or has a public guardian appointed by a Vermont court (18 VSA §9301-9316); or

- (iii) The child or student is an unaccompanied homeless youth as defined in §725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)) (34 CFR §300.519(a)(4))
- (13) **Eligibility**. See Rule 2360.5.5 for children from birth through 2 years 11 months of age. See Rule 2361 for children ages 3 up to the sixth birthday. See Rule 2362 for children and students ages 6 through 21.
- (14) **Evaluation**. Evaluation means procedures used in accordance with Rule 2362 with the following exception: The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.
- (15) **Evaluation Planning Team (EPT)**. Evaluation Planning Team means a group of individuals including the parent that is responsible for developing an evaluation plan and reviewing the results to determine if a student is or continues to be eligible for special education and related services. The membership requirements are the same as those outlined for the IEP Team in Rule 2362(b).
- (16) **Extended School Year Services (ESY)**. The term extended school year services means special education and related services that are provided to a child with a disability beyond the normal school year of the LEA in accordance with the child's IEP and state standards and at no cost to the parents of the child.
- (17) **Functional Performance**. Functional performance is the acquisition of essential and critical skills needed for children with disabilities to learn specific daily living, personal, social, and employment skills, or the skills needed to increase performance and independence at work, in school, in the home, in the community, for leisure time, and for postsecondary and other life long learning opportunities.

- (18) **Free Appropriate Public Education (FAPE).** A FAPE means special education and related services that—
- (a) Are provided at public expense, under public supervision and direction, and without charge to the parent or student;
 - (b) Meet the standards of the State, including the requirements of Part B of the IDEA; include preschool, elementary school, or secondary school education; and
 - (c) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Rules 2363.
- (19) **Highly Qualified Special Education Teachers.** Highly Qualified Special Education Teachers shall meet one of the following:
- (a) Requirements for special education teachers teaching core academic subjects. For any public elementary or secondary school special education teacher teaching core academic subjects, the term highly qualified means that the special education teacher shall carry an endorsement appropriate to the assignment and shall meet the content knowledge requirements for the highest grade level of the students who receive primary instruction from the teacher.
 - (b) Requirements for special education teachers in general.
 - (i) When used with respect to any public elementary school or secondary school special education teacher, highly qualified requires that:
 - (A) The teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), and holds a license to teach in the State as a special education teacher;
 - (B) The teacher does not have provisional special education certification or licensure; and
 - (C) The teacher holds at least a bachelor's degree.
 - (ii) A teacher will be considered to meet the standard in paragraph (b)(i) of this section if that teacher is participating in an alternative route to special education certification program under which—
 - (A) The teacher—

- 1) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;
 - 2) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;
 - 3) Assumes functions as a teacher only for a specified period of time not to exceed three years; and
 - 4) Demonstrates satisfactory progress toward full certification as prescribed by the State of Vermont.
- (20) **Homeless children.** Homeless children means individuals who lack a fixed, regular, and adequate nighttime residence; and includes:
- (a) Children and youth who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
 - (b) Children and youth who have a primary night-time residence that is a public or private place not designed for, or ordinarily used as a regular sleeping accommodation for human beings;
 - (c) Children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
 - (d) Migratory children who qualify as homeless because the children are living in circumstances described in sections (a) through (c).
- (21) **Individualized Education Program.** Individualized Education Program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with Rule 2363.
- (22) **Individualized Education Program Team.** Individualized education program team or IEP team means a group of individuals described in Rule 2363 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

- (23) **Limited English Proficient.** Limited English proficient means an individual, aged 3 through 21, who is enrolled or preparing to enroll in an elementary school or secondary school; and who meets one of the following criteria:
- (a) Who was not born in the United States or whose native language is a language other than English; or
 - (b) Who is a Native American or Alaska Native, or a native resident of the outlying areas; and
 - (i) Who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or
 - (ii) Who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and
 - (iii) Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual:
 - (A) The ability to meet the proficient level of achievement on State assessments;
 - (B) The ability to successfully achieve in classrooms where the language of instruction is English; or
 - (C) The opportunity to participate fully in society.
- (24) **Local Education Agency.** Local Education Agency (LEA) means the supervisory union unless there is a unanimous vote at a supervisory union meeting that the supervisory union will only coordinate special education services on behalf of member districts in which case the LEA is the local school district (16 VSA 261a(6)).
- (25) **Local Education Agency Plan (LEAP).** The Vermont Agency of Education has established a goal of providing full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal. Each LEA assures its commitment to that goal by submitting its LEAP consistent with Rule 2366.10

- (26) **Meeting**. A meeting is a session held for the development or review of a child's evaluation plan, eligibility determination or an IEP. A meeting does not include informal or unscheduled conversations involving school personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities in which school personnel might engage to develop a proposal or response to a parent proposal that will be discussed at a later meeting.
- (27) **Native language**. Native language, when used with respect to an individual who is limited English proficient, means the following:
- (a) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section.
 - (b) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.
 - (c) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).
- (28) **Parent** means:
- (i) A biological or adoptive parent of a child or student; when attempting to act as the parent and when more than one party is qualified to act as a parent, must be presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational or early intervention services decisions for the child or student;
 - (ii) A foster parent, or developmental home provider who has been appointed the educational surrogate parent by the Vermont Educational Surrogate Parent Program; or
 - (iii) A guardian generally authorized to act as the child's or student's parent, or authorized to make early intervention, education, health or developmental decisions for the child or student (but not the State if the child or student is a ward of the State);
 - (iv) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child or student lives, or an individual who is legally responsible for the child or student's welfare;

- (v) An educational surrogate parent who has been appointed by the Agency of Education;
or
 - (vi) If a judicial decree or order identifies a specific individual to act as the “parent” of a child or student or to make educational decisions on behalf of a child or student, then such individual shall be determined to be the “parent” for purposes of this section, except that the LEA that provides education or care for the child or student may not act as the parent.
- (29) **Personally identifiable.** Personally identifiable means information that contains:
- (a) The name of the child, the child’s parent, or other family member;
 - (b) The address of the child;
 - (c) A personal identifier, such as the child’s social security number or student number; or
 - (d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.
- (30) **Print disability.** Print disability means a condition related to blindness, visual impairment, specific learning disability or other physical condition in which the student needs an alternative or specialized format (i.e. Braille, large print, audio, digital text et al, in order to access and gain information from conventional printed instructional materials.
- (31) **Related services.** Relates services means developmental, corrective, and other supportive services as are required to assist a student with a disability and includes speech-language pathology, audiology services, interpreting services, psychological services, physical therapy, occupational therapy, counseling services, including rehabilitation counseling services, orientation, transportation and mobility services, medical services as defined in this section, parent counseling and training, school health services, school nurse services, school social work, assistive technology services, appropriate access to recreation, including therapeutic recreation, other appropriate developmental or corrective support services, and other appropriate support services and includes the early identification and assessment of disabling conditions in students as described in Rule 2360.2.16.

- (32) **Scientifically based research.** Scientifically based research means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and includes research that:
- (a) Employs systematic, empirical methods that draw on observation or experiment;
 - (b) Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;
 - (c) Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;
 - (d) Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;
 - (e) Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and
 - (f) Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.
- (33) **Services plan.** Services plan means a written statement that describes the special education and related services the LEA will provide to a parentally-placed child with a disability enrolled in an independent school or in a registered home school, who has been designated to receive services, including the location of the services and any transportation necessary, and is developed and implemented in accordance with Rule 2368.
- (34) **Special Education Services.** The term "special education" means specially designed instruction that cannot be provided within the school's standard instructional conditions or provided through the school's educational support system, at no cost to the parent, to meet the unique needs of an eligible child with a disability. Specially designed instruction means adapting, as appropriate, to the needs of an eligible child, the content, methodology, or delivery of instruction.

- (35) **Student.** For the purpose of this document, the term “student” shall refer to individuals ages six through twenty-two years of age
- (36) **Supplementary aids and services.** Supplementary aids and services means aids, services, and other supports that are provided in general education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in the least restrictive environment.
- (37) **Universal Design.** The term “universal design”, as provided in the Assistive Technology Act of 2004, means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly accessible (without requiring assistive technologies) and products and services that are interoperable with assistive technologies.
- (38) **Vulnerable adult in state custody.** For purposes of these rules, “vulnerable adult in state custody” is a student that is 18 through 21 years of age and for whom guardianship authority to make educational decisions on behalf of the student has been granted by a court to the Commissioner of the Department of Disabilities, Aging and Independent Living pursuant to Chapter 215 of Title 18. A vulnerable adult in state custody meets the definition of, and shall be afforded, all rights and protections as a “ward of the state” pursuant to 20 U.S.C. § 1401(36).
- (39) **Ward of the state.** All rights and protections as a “ward of the state” pursuant to 20 U.S.C. § 1401(36) shall be afforded to a “child in state custody” or a “vulnerable adult in state custody” as those terms are defined in this section.

2361.2 Essential Early Education (EEE) Eligibility of Children Age Three Years Up To the Sixth Birthday

- (a) A child age three years up to the sixth birthday shall be eligible for EEE services if the child meets at least one of the following:
- (1) The child meets criteria set forth in Part C Rule 2360.5.9(c):
 - (i) Received consistent (e.g., one 60 minute intervention session per week) specialized instruction, developmental therapy services or speech and language services through an IFSP/One Plan; and
 - (ii) CIS/EI IFSP/One Plan team has determined the child as ‘potentially eligible’ for EEE services within six months of the child’s third birthday; or
 - (iii) The child has a medical condition which may result in significant delays by the child’s sixth birthday, and the school based Evaluation Planning Team (EPT) has determined that the child is in need of Part B EEE services; or
 - (2) After the EPT reviews the results of the comprehensive evaluation and concludes that the child has a disability caused by a developmental delay and the child is in need of early childhood special education services; or
 - (3) The child has a medical condition which may result in significant delays, and the child is in need of early childhood special education services; or
 - (4) For a child enrolled in kindergarten, the EPT may consider using eligibility criteria for children ages 6 through 21 (school age) pursuant to Rule 2362, including the determination of a disability, adverse effect on educational performance and need for special education.
- (b) For the purposes of this section, “medical condition” means a condition diagnosed by a licensed physician such as, but not limited to, autism, cerebral palsy, Down Syndrome, attention deficit disorder with hyperactivity that may result in significant delays by the child's sixth birthday.
- (c) For the purposes of this section, “developmental delay” is determined through a comprehensive evaluation as measured by at least two appropriate assessment measures, one of which must be a diagnostic instrument. Other measures may include, but are not limited to, observation, interview, review of ongoing assessment, and functional assessment. To meet developmental delay criteria a child must demonstrate at least one of the following:

- (1) A 40% delay in one or more developmental domains; or
 - (2) A 25% delay in two or more developmental domains; or
 - (3) A 2.0 standard deviation at, or below the mean (2nd percentile) in one or more developmental domains; or
 - (4) A 1.5 standard deviation at, or below the mean (7th percentile) in two or more developmental domains.
- (d) Developmental Domains are defined as:
- (1) Speech and language development including receptive and/or expressive communication, articulation, fluency and/or voice;
 - (2) Adaptive development (self-help skills);
 - (3) Social or emotional development;
 - (4) Physical development including gross or fine motor skills; or
 - (5) Cognitive skills such as perception, memory, processing and reasoning.
- (e) The administration of any assessments shall be in compliance with the evaluation requirements set forth in Rule 2362.2.1.
- (f) The percentage delay in a child's performance on a norm referenced assessment may be measured by dividing the child's age equivalent score in months by the child's actual age in months, and then multiplying the quotient by 100. The result is then subtracted from 100 to determine the child's percentage of delay.
- (g) If the EPT has determined the child eligible to receive special education and related services an IEP shall be written within 30 days of the eligibility determination.
- (h) The content of the child's IEP shall be as set forth in Rule 2363.7. For a preschool age child, the IEP shall address how the child's disability affects his/her access to and participation in age appropriate activities.

2361.3 Educational Placement in the Least Restrictive Environment (LRE)

- (a) In determining the educational placement of a preschool child with a disability, each LEA shall provide a full continuum of placement options and ensure that:

- (1) Placement decisions (provision of early childhood special education and related services) shall be made by the IEP team in conformity with the provisions regarding placement in the least restrictive environment set forth in Rule 2364, and
- (2) The child's educational placement shall be:
 - (i) Determined at least annually;
 - (ii) Based on the child's IEP;
 - (iii) In as close proximity as possible to the child's home; and
 - (iv) Based on consideration of community-based early care and education settings, such as public pre-K classrooms, private childcare, Head Start or as appropriate for the child, within the home.

2361.4 Transition for Children Moving into Kindergarten

- (a) In order to ensure a smooth transition to kindergarten, the IEP team shall:
 - (1) Meet three to six months prior to the child's entrance into kindergarten to ensure that the child's IEP is ready to be implemented at the beginning of the school year.
 - (2) Include in the meeting the parents of the child with a disability, a kindergarten teacher in whose school the child will be attending, and a special education teacher or other school representative from the LEA who is:
 - (i) Knowledgeable about the LEA's resources;
 - (ii) Qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities; and
 - (iii) Knowledgeable about the general education curriculum.
 - (iv) Other individuals with knowledge or special expertise regarding the child may be included in the meeting.

2361.5 IEP Content

The content of the student's IEP shall be as set forth in Rule 2363.7. For preschoolers, the IEP may also address how the child's disability affects his or her participation in developmentally appropriate play activities.

2362 Eligibility for Children Ages Six Years through Twenty One

(34 CFR §300.306)

- (a) A child shall be eligible for special education if:
 - (1) He or she has one or more of the disabilities described in Rule 2362.1;
 - (2) The disability results in an adverse effect on the child's educational performance in one or more of the basic skill areas as described in subsection (f), below; and
 - (3) The student needs special education services to benefit from his or her educational program and this support cannot be provided through the educational support system, standard instructional conditions or supplementary aids and services provided in the school.
- (b) The three criteria listed in section (a) above shall also be applied at the time the student receives a re-evaluation to determine eligibility.
- (c) A formal evaluation process, documented in a report as required by Rule 2362.2.5, shall be used to determine whether the above criteria are met.
- (d) Adverse Effect.
 - (1) To conclude that a disability has an adverse effect on the student's educational performance, the EPT shall determine and document that, as a result of his or her disability, the student is functioning significantly below grade norms compared to grade peers in one or more of the basic skills defined in Rule 2362(g).
 - (2) "Significantly below grade norms" means the 15th percentile or below, or a 1.0 standard deviation or more below the mean, or the equivalent, as reflected by performance on at least three of the six following measures of school performance, generally over a period of time:
 - (i) Individually administered nationally normed achievement test;
 - (ii) Normed group administered achievement tests, including nationally normed curriculum-based measures;
 - (iii) Grades;
 - (iv) Curriculum-based measures which could include benchmark assessments and continuous progress monitoring outcomes;

- (v) Criterion-referenced or group-administered criterion-referenced assessments;
 - (vi) Student work, language samples or portfolios.
- (3) With respect to each basic skill considered, the EPT shall specifically identify in its report:
- (i) Each type of measure considered by the Team;
 - (ii) The finding of the Team, with respect to each measure considered, as to whether and why the measure met (or did not meet) the 15th percentile, -1.0 standard deviation, or equivalent standard, in order to support a finding of adverse effect;
 - (i) The specific testing data/scores, student work, and/or education records relied upon by the Team to support its finding under subparagraph (ii) that a measure did or did not meet the standard; and
 - (iv) A statement of each basic skill area in which the disability was determined to have an adverse effect, based upon (i)-(iii).
- (e) A child may not be determined to be eligible under these rules if the determinant factor for that eligibility decision is lack of instruction in reading, including the essential components of reading instruction (phonemic awareness, phonics, fluency including oral reading skills, vocabulary development, reading comprehension strategies), or math, or limited English proficiency; and the child does not otherwise meet the eligibility criteria of these rules.
- (f) If a child has a disability that results in an adverse effect on his or her educational performance in one or more of the basic skills, the EPT shall, in the following order:
- (1) Consider the interventions, services, and accommodations the student may need, and
 - (2) Determine and provide justification that the student requires specially designed instruction that cannot be provided within the school's standard instructional conditions, or provided through the school's educational support system.
- (g) Basic skill areas—
- (1) Unless otherwise specified in the disability category in these rules, basic skill areas are:
 - (i) Oral expression;
 - (ii) Listening comprehension;
 - (iii) Written expression;

- (iv) Basic reading skills;
 - (v) Reading comprehension;
 - (vi) Mathematics calculation;
 - (vii) Mathematics reasoning;
 - (viii) Motor Skills
- (2) For an individual with a sensory impairment, one or more comparable basic skills shall be considered to serve as an appropriate substitute for one or more of the above basic skills, for example, Braille skills for basic reading skills.
- (3) The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

2362.1 Categories of Disability

The existence of one or more of the following categories of disability shall be established according to the criteria set forth below.

(a) Autism Spectrum Disorder

- (1) Is a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three. Included in the spectrum are: autism, pervasive developmental disorder – not otherwise specified, Rett’s Disorder, Asperger’s Disorder, and childhood disintegrative disorder.
- (2) Other characteristics often associated with autism spectrum disorder are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Characteristics vary from mild to severe as well as in the number of symptoms present. Autism spectrum disorder does not apply if a child’s educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in Rule 2362.1(c).
- (3) A child who manifests the characteristics of autism spectrum disorder after age three could be identified as having autism spectrum disorder if the criteria in subsection (1)

& (2) are satisfied.

- (4) The EPT shall obtain an opinion of a licensed psychologist and/or medical physician who have training and experience in understanding autism spectrum disorders and other developmental disorders as to the existence of an autism spectrum disorder and its effect on the student's ability to function and whether there is an adverse effect on the child's educational performance.
-
- (b) **Deaf-blindness** means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.
 - (c) **Emotional disturbance** means a condition including schizophrenia, exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance.
 - (1) Characteristics of an emotional disturbance:
 - (i) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
 - (ii) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
 - (iii) Inappropriate types of behavior or feelings under normal circumstances.
 - (iv) A general pervasive mood of unhappiness or depression.
 - (v) A tendency to develop physical symptoms or fears associated with personal or school problems.
 - (2) A student who is socially maladjusted shall not be considered to be emotionally disturbed unless, he or she also meets the definition of emotional disturbance as set forth in subdivision (1). A social maladjustment is a persistent pattern of violating societal norms, such as multiple acts of truancy, or substance or sex abuse, and is marked by struggle with authority, low frustration threshold, impulsivity, or manipulative behaviors. A social maladjustment unaccompanied by an emotional disturbance is often indicated by some or all of the following:
 - (i) Unhappiness or depression that is not pervasive;

- (ii) Problem behaviors that are goal-directed, self-serving and manipulative;
 - (iv) Actions that are based on perceived self-interest even though others may consider the behavior to be self-defeating;
 - (iv) General social conventions and behavioral standards are understood, but are not accepted;
 - (v) Negative counter-cultural standards or peers are accepted and followed;
 - (vi) Problem behaviors have escalated during pre-adolescence or adolescence;
 - (vii) Inappropriate behaviors are displayed in selected settings or situations (e.g., only at home, in school or in selected classes), while other behavior is appropriately controlled; and/or
 - (viii) Problem behaviors are frequently the result of encouragement by a peer group, are intentional, and the student understands the consequences of such behaviors.
- (3) The EPT shall obtain an opinion of a licensed psychologist or psychiatrist as to the existence of an emotional disturbance and its effect on the student's ability to function, based on the above criteria.
- (4) Upon determination of the existence of an emotional disturbance disability, the parent shall be informed of the availability of interagency coordination of services, as defined by 33 V.S.A. §4301 et seq.
- (d) **Hearing Loss** means deafness or hard of hearing as determined by an audiologist, otologist, or otolaryngologist, and demonstrated by a 25 decibel HL threshold (ANSI, 69) or worse for one or more of the frequencies 250-8000HZ, in one or both ears, with or without amplification.
- (e) **Intellectual disability** means a delay in learning of sufficient magnitude to cause a student's performance to fall at or below -1.5 standard deviations from the mean of a test of intellectual ability, existing concurrently with deficits in adaptive behavior.
- (f) **Multiple disabilities** means concomitant impairments (such as intellectual disability-blindness or intellectual disability-orthopedic impairment) the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-

blindness.

- (g) **Orthopedic impairment** includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures). The EPT shall obtain an opinion from a licensed physician as to the existence of the orthopedic impairment and its effect on the student's ability to function.
- (h) **Other health impairment** means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:
 - (1) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, non-verbal learning disability and Tourette syndrome; and adversely affects a child's educational performance.
 - (2) In order to determine the existence of an other health impairment and its effect on the student's ability to function, the EPT shall obtain an opinion from a person:
 - (i) Whose professional licensure authorizes him or her to offer an opinion on the existence of the specific condition suspected to be another health impairment and its effect on the student's ability to function, and
 - (ii) Who has specific training and experience in diagnosing and recommending treatment for the specific condition suspected.
- (i) **Specific Learning Disability**
 - (1) The term "specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.
 - (2) Disorders include conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

- (3) The term “specific learning disability” does not include a learning problem that is primarily the result of: visual, hearing, or motor disabilities; intellectual disability; emotional disturbance; or environmental, cultural, or economic disadvantage.
- (j) **Speech or language impairment** means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment that adversely affects a child’s educational performance and shall be demonstrated by significant deficits in listening comprehension or oral expression. The EPT shall obtain an opinion from a licensed speech-language pathologist as to the existence of a speech or language impairment and its effect on the student’s ability to function. The determination of a speech or language impairment shall be based on the following criteria:
- (1) Listening comprehension. A significant deficit in listening comprehension exists when a student demonstrates at least 2.0 standard deviations below the test mean on at least one composite score and other measures of auditory processing or comprehension of connected speech. Auditory processing or comprehension include:
- (i) phonology,
 - (ii) morphology,
 - (iii) syntax,
 - (iv) semantics, or
 - (v) pragmatics.
- (2) Oral Expression. For purposes of determination of a speech and language impairment, a significant deficit in oral expression exists when a child demonstrates one or more of the following conditions:
- (i) Voice. A significant deficit in voice exists when both of the following are present:
 - (A) Documentation by an otolaryngologist that treatment is indicated for a vocal pathology or speech related medical condition, and
 - (B) Abnormal vocal characteristics in pitch, quality, nasality, volume or breath support, which persist for at least one month.

- (ii) Fluency. A significant deficit in fluency exists when the student exhibits one or more of the following behaviors:
- (A) Part word repetitions or sound prolongations occur on at least 5% of the words spoken in two or more speech samples, or
 - (B) Sound or silent prolongations exceed one second in two or more speech samples, or
 - (C) Secondary symptoms or signs of tension or struggle during speech which are so severe as to interfere with the flow of communication.
- (iii) Articulation. A significant deficit in articulation attributed to an organic or functional disorder exists when a student is unable to articulate two or more of the unrelated phonemes in connected speech, set forth below, and it is not attributed to dialect or second language difficulties.

Age	Phonemes
6.0 – 6.11	m, n, h, w, p, b, t, d, k, g, f, v (y), (ch), (th) as in the word “mother”, (sh) and “j” as in jump
7.0 – 7.11	(th) as in the word “thin”, l
8.0 and above	s, z, r, (zh) as in “measure”, ng and consonant blends with s, l, and r

- (iv) Oral Discourse. A significant deficit exists when a student demonstrates a deficit of at least 2 standard deviations below the test mean on at least one composite score and other measures of oral discourse. Oral discourse includes:
- (A) phonology,
 - (B) morphology,
 - (C) syntax,
 - (D) semantics, or
 - (E) pragmatics

- (k) **Traumatic brain injury** means an injury to the brain caused by an external physical force or by an internal occurrence such as a stroke or aneurysm, resulting in total or partial functional disability or psychosocial impairment, or both. The EPT shall obtain an opinion of a licensed physician as to the existence of a traumatic brain injury and its effect on the student's ability to function, as defined by the following criteria:
- (1) The condition includes open or closed head injuries resulting in impairments in one or more areas, including cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech.
 - (2) The condition does not include brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.
- (l) **Visual impairment** including blindness means an impairment in vision as evaluated by an optometrist or ophthalmologist, demonstrated by central visual acuity that is 20/70 or worse in the better eye with correction, or a peripheral field that subtends an angle not greater than 20 degrees at its widest diameter. For the purposes of this disability, mobility and orientation shall also be considered to be special education services. The term includes both partial sight and blindness.

2362.2 Procedures for Evaluation and Determination of Eligibility-Definition and Purpose

- (a) For purposes of this section, "evaluations" are defined as observations, tests and other diagnostic measures, individually selected and administered to determine the existence of a disability, the effect the disability has on the child's educational and functional performance, the need for specialized services, and for an appropriate program. An evaluation is a compilation of information that is designed to assist:
- (1) The EPT in determining eligibility for special education;
 - (2) The IEP team in developing the student's individualized educational program including special education services, and as required, related services, transition services, assistive technology, supplementary aids and services; and
 - (3) The IEP team in determining an appropriate placement in the least restrictive environment.

- (1) The EPT membership for a student/child suspected of having a specific learning disability shall also include the following people:
 - (ii) The student/child's general education teacher, or
 - (iii) If the student/child does not have a general education teacher, a general education teacher qualified to teach a student/child of his or her age; or
 - (iv) For a student/child of less than school age, an individual qualified to teach a student/child of his or her age; and
 - (v) At least one person qualified to conduct individual diagnostic examinations of students/children, such as a school psychologist, speech and language pathologist, special education teacher, or remedial reading teacher.
- (4) Where the EPT cannot achieve consensus, as a member of the EPT, the LEA representative shall make the final decision.
- (c) The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services. (34 CFR §300.302)

2362.2.1 Initial Evaluations (34 CFR §300.301)

Either a parent of a child, or an LEA, or the AOE, or other State agency, may initiate a request for an initial evaluation to determine if a child or student is eligible for special education and related services.

- (a) Each LEA shall conduct a comprehensive and individual initial evaluation before the initial provision of special education and related services to a student with a disability under these rules.
- (b) Upon receipt of a request for an evaluation, the school district shall, within fifteen calendar days, either:
 1. Request parent consent to initiate the evaluation
 2. Convene an Evaluation Planning Team (EPT) meeting
 3. Provide written reasons for denial of the request

- (c) The initial evaluation shall be completed and the report issued within sixty days from either:
 - 1. The date parental consent has been received by the LEA.
 - 2. The date on the LEA's Notice, which informs parents that it will be reviewing existing data as the sole basis for the initial evaluation.
- (d) If completion of the initial evaluation will be delayed for a period exceeding sixty days as specified in sections (1) and (2) above, the parent shall be given written notice of the delay and a schedule of evaluation activities. Such notice shall be sent to a parent before the expiration of the sixty day period. A notice of delay shall only be used for exceptional circumstances related to the student and/or family, which shall be documented.
- (e) Consent shall be obtained before individual tests can be administered to students who receive special education services unless the assessment is being administered as an alternate assessment to district-wide or statewide assessments.
- (f) The sixty day time limit for the completion of an initial eligibility evaluation identified in section (b) shall not apply to an LEA if the parent of a student repeatedly fails or refuses to make a student available for the evaluation or if:
 - 1. A student moves to a new LEA before the eligibility evaluation in the old LEA has been completed;
 - 2. The new LEA is making sufficient progress to ensure a prompt completion of the evaluation; and
 - 3. The parent and new LEA have agreed to the specific time when the evaluation will be completed.

2362.2.2 Evaluation Planning Team (EPT) – Membership

- (a) Evaluations shall be arranged for, or conducted by an EPT with assistance, where appropriate, from other professionals (e.g., Medical, psychological, etc.)
- (b) The EPT membership shall include:

- (1) A local education agency (LEA) representative who:
 - (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children and students with disabilities;
 - (ii) Is knowledgeable about the general curriculum;
 - (iii) Is knowledgeable about the availability of resources of the LEA;
 - (iv) An LEA representative may designate any LEA personnel member of the EPT to also serve as the LEA representative, if the criteria in subsections (i)(ii)(iii) are satisfied.
 - (2) At least one special education teacher of the student/child, or if appropriate, at least one special education service provider for the student/child;
 - (3) At least one general education teacher of the student/child, to the extent appropriate, if the student/child is, or may be, participating in the general education environment; The student when his nor her post-secondary transition needs or services will be considered and other agencies likely to be responsible for providing or paying for transition services;
 - (4) At the discretion of the parent or the school district, other individuals who, in the opinion of the parents or school district; have knowledge or special expertise regarding the student/child, including related services personnel, as appropriate;
 - (5) An individual who can interpret the instructional implication of evaluation results, who also may be a member of the team as described in sections (1), (2), (3) and (5) above;
 - (6) The parent(s), guardian or educational surrogate parent of the student/child who shall be given meaningful opportunity to contribute information to the development of an evaluation plan, and
 - (7) If appropriate, the student/child.
- (c) The EPT membership for a student/child suspected of having a specific learning disability shall also include the following people:
- (1) The student/child's general education teacher, or
 - (2) If the student/child does not have a general education teacher, a general education teacher qualified to teach a student/child of his or her age; or
 - (3) For a student/child of less than school age, an individual qualified to teach a student/child of his or her age; and
 - (4) At least one person qualified to conduct individual diagnostic examinations of

students/children, such as a school psychologist, speech and language pathologist, special education teacher, or remedial reading teacher.

- (d) Where the EPT cannot achieve consensus, as a member of the EPT, the LEA representative shall make the final decision.

2362.2.3 Re-Evaluation Requirements (34 CFR §300.303)

- (a) The LEA shall ensure that a reevaluation of each child with a disability is conducted:
 - (1) If the LEA determines that the educational or related service needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
 - (2) If the child's parent or teacher requests a reevaluation.
- (b) A reevaluation conducted under sub-section (a):
 - (1) May occur not more than once a year, unless the parent and the LEA agree otherwise; and
 - (2) Shall occur at least once every 3 years, unless the parent and the LEA agree that a reevaluation is unnecessary.

2362.2.4 Evaluation Procedures

- (a) The LEA shall provide notice to the parents of a child with a disability in accordance with 2365.1.1 that describes any evaluation procedures the LEA proposes to conduct.
- (b) In conducting the evaluation, the LEA shall:
 - (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent that may assist in determining:
 - (i) Whether the child is eligible for special education services; and
 - (ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

- (2) Not use any single measure or assessment as the sole criterion for determining special education eligibility and for determining an appropriate educational program for the child; and
- (3) Assess all student characteristics and other factors that may have a significant influence on eligibility, services to be offered or accommodations to be made, including, but not limited to:
 - (i) Physical characteristics:
 - (A) Vision
 - (B) Hearing
 - (C) Health
 - (D) Medical
 - (E) Nutrition
 - (ii) Social, behavioral, or emotional characteristics:
 - (A) Self-esteem
 - (B) Self-control
 - (C) Interaction with peers and adults
 - (iii) Adaptive behavior across settings:
 - (A) Independence skills
 - (B) Coping skills
 - (C) Self-care skills
 - (iv) Relevant life circumstances:
 - (A) Family
 - (B) Community
 - (C) Environmental factors
 - (v) Speech characteristics:
 - (A) Articulation
 - (B) Fluency

- (C) Voice
- (vi) Language and communication skills
- (vii) Intellectual or cognitive characteristics:
 - (A) Learning abilities
 - (B) Learning styles
 - (C) Reasoning
- (viii) Areas of concern in the basic skills areas:
 - (A) Oral expression
 - (B) Listening comprehension
 - (C) Written expression
 - (D) Basic reading skills
 - (E) Reading comprehension
 - (F) Mathematics calculation
 - (G) Mathematics reasoning
 - (H) Motor skills
- (ix) Vocational needs
- (x) Skills in the learning environment
- (xi) Assistive technology needs related to devices and services
- (xii) The EPT shall assess the student's current level of performance in all curriculum areas with respect to which special education, related services and supplementary aids and services may be required.
- (4) Ensure that assessments and other evaluation materials used to assess a child are:
 - (i) Selected and administered so as not to be discriminatory on a racial or cultural basis;
 - (ii) Provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to provide or administer;
 - (iii) Used for the purposes for which the assessments or measures are valid and reliable;

- (iv) Administered by trained and knowledgeable personnel; and
 - (v) Administered in accordance with any instructions provided by the producer of the assessments.
 - (vi) Those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
 - (vii) Selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
- (5) Ensure that assessments of children with disabilities who transfer from one LEA to another LEA in the same academic year are coordinated with such children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.
- (6) Ensure that the evaluation is sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category in which the child has been found eligible.
- (7) Ensure that assessment tools and strategies provide relevant information to directly assist the IEP team in determining that the educational needs of the child are provided.
- (c) As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the EPT and other qualified professionals, as appropriate, shall:
- (1) Review existing evaluation data on the child, including:
 - (i) Evaluations and information provided by the parents of the child;
 - (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and
 - (iii) Observations by teachers and related services providers; and
 - (2) On the basis of that review, and input from the student's parents, identify what additional data, if any, are needed to determine:
 - (i) Whether the student is or continues to be eligible for special education and related services,

- (ii) The present levels of academic achievement and related developmental needs of the student;
 - (iii) Whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate, in the general education curriculum.
- (d) The EPT may conduct its review without a meeting.
 - (i) If a parent requests that the EPT review data through a formal meeting, then a formal meeting with required notices shall be held.
 - (ii) A formal meeting shall be required whenever the initial eligibility of the child will be determined. When a satisfactory agreement on such time or place cannot be reached, the LEA shall use other, mutually agreed upon methods, to ensure parent participation, including individual or conference telephone calls, or video conferencing.
- (e) The LEA shall administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (c) of this section.
- (f) If the EPT determines that no additional data are needed to determine whether the child continues to be eligible for special education and related services, the LEA shall notify the child's parents of:
 - (1) That determination and the reasons for the determination; and
 - (2) The right of the parents to request additional testing to determine eligibility.
 - (i) The LEA is not required to conduct additional testing unless requested to do so by the child's parents.
- (g) The LEA shall evaluate a child before determining that the child is no longer eligible for special education and related services, unless the termination of a child's eligibility is due to graduation from secondary school with a regular diploma, or due to reaching the age of 22.
 - (i) Under these circumstances, the LEA shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

- (ii) The LEA shall send a notice to the student and his/her parent(s) that a change of placement is scheduled to occur and give the reasons why.
- (h) Prior to conducting an initial or re-evaluation for eligibility purposes, the EPT shall complete a written evaluation plan which lists the areas to be assessed, the procedures to be used in carrying out the evaluation, and personnel by title responsible for performing the evaluations. All EPT members shall have the opportunity to provide input in the development of the written evaluation plan.

2362.2.5 Additional Procedures for Identifying Children With Specific Learning Disabilities
(34 CFR §§300.307-300.311)

- (a) In making the determination that a student has a specific learning disability the LEA shall decide whether to use a discrepancy model or a model based on whether the student responds to scientific, research based intervention.
 - (1) When using a discrepancy model, the EPT shall document that the student exhibits a discrepancy of 1.5 standard deviations or greater between ability and expected levels of performance in one or more of the basic skill areas.
 - (2) When using a model based on whether the student responds to scientific, research based intervention the EPT shall document use of the following:
 - (i) High-quality instruction and scientific research-based tiered interventions aligned with individual student need;
 - (ii) Frequent monitoring of student progress to make results-based academic decisions; and
 - (iii) Use of student response data to evaluate the effectiveness of interventions.
- (b) The determination of whether a student has a specific learning disability shall be made by the student's parents and a team of qualified professionals, which shall include:
 - (1) The child's general education teacher; or
 - (i) If the child does not have a general education teacher, a classroom teacher qualified to teach a child of his or her age; or
 - (2) For a child of less than school age, an individual licensed by the Vermont Agency of Education to teach a student of his or her age; and

- (3) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, special education teacher or remedial reading teacher.
- (c) The EPT may determine that a student has a specific learning disability if:
 - (1) When provided with learning experiences and instruction appropriate for the student's age or State-approved grade-level standards, the student does not achieve adequately in one or more of the following areas:
 - (i) Oral expression.
 - (ii) Listening comprehension.
 - (iii) Written expression.
 - (iv) Basic reading skill.
 - (v) Reading fluency skills.
 - (vi) Reading comprehension.
 - (vii) Mathematics calculation
 - (viii) Mathematics problem solving
 - (ix) Motor Skills.
 - (2) The student does not make sufficient progress to meet age or State approved grade level standards in one or more of the areas identified in (c)(1) when using either a discrepancy model or a model based on whether the student responds to scientific, research based intervention.
 - (3) The EPT determines that its findings under paragraphs (c)(1) and (2) of this section are not primarily the result of:
 - (i) A visual, hearing, or motor disability;
 - (ii) Intellectual Disability;
 - (iii) Emotional disturbance;
 - (iv) Cultural factors;
 - (v) Environmental or economic disadvantage; or
 - (vi) Limited English proficiency.
- (d) To ensure that underachievement in a student suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the EPT shall consider, as part of the evaluation, the following:

- (1) Data that demonstrate that prior to, or as a part of, the referral process, the student was provided appropriate instruction in general education settings, delivered by qualified personnel; and
 - (2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the student's parents.
- (e) The LEA shall promptly request parental consent to evaluate the student to determine if the student needs special education and related services, and shall adhere to the timeframes described in Rule 2362.2.1 unless extended by mutual written agreement of the student's parents and other members of the EPT if:
- (1) Prior to a referral, a student has not made adequate progress after an appropriate period of time when provided scientifically research based instruction/intervention; and
 - (2) Whenever a student is referred for an evaluation.
- (f) At least one member of the child's EPT, other than the child's current teacher, who is trained in observation, shall observe the child, and the learning environment, including the general classroom setting, to document academic performance and behavior in the areas of difficulty.
- (1) Students who are enrolled in a program of home study or who receive instruction delivered in a home, hospital, preschool, childcare setting or other out of school setting shall be observed in instructional environments appropriate for children of that age, by trained personnel who are not the teacher. This observation shall be reported in writing to the EPT.
 - (2) If, after reasonable efforts have been made, it is not possible to conduct a classroom observation due to chronic truancy or other extenuating circumstances, there shall be documentation of efforts made to observe the student in an instructional environment.

2362.2.6 Evaluation and Planning Team Report

- (a) When all necessary information is collected, the EPT shall prepare a written report that documents whether the child is eligible. When a student is found eligible, the report shall be available for use by the IEP team in program planning. The report shall include the following and shall be provided to the parent by the EPT:

- (1) A conclusion supported by a rationale as to whether or not the student is eligible for special education based on the following:
 - (i) The presence or absence of a disability;
 - (ii) If there is a disability, whether it has an adverse effect on educational performance in one or more of the basic skill areas; and
 - (iii) Whether the student needs special education services to benefit from his or her educational program and that this support cannot be provided through the educational support system, standard instructional conditions or supplementary aids and services provided in the school.
 - (2) The evaluation procedures used including:
 - (i) A description of any modifications or changes made from the evaluation procedures specified in the evaluation plan; or
 - (ii) Changes which were necessary in test administration as described in Rule 2362.2.3(h);
 - (3) A summary of all educationally relevant information collected during the evaluation, including educational, medical and psychological information and a summary of other factors considered;
 - (4) Recommendations as to the need for accommodations in curriculum, assessments, material, or programmatic adaptation, behavior management interventions, supplemental aids and services;
 - (5) The initials of all team members indicating agreement or disagreement with the eligibility conclusion. A group member who does not agree with the conclusion shall submit a separate statement presenting his or her conclusions and this statement shall become part of the Evaluation Plan and Report; and
 - (6) The written report of an observation of the student, if an observation has been conducted.
- (b) For a student suspected of having a specific learning disability, the evaluation report shall include documentation of:
- (1) Whether the student has a specific learning disability;
 - (2) The basis for making the determination, including an assurance that the determination has been made in accordance with Rules 2362.2.3 and 2362.2.4.

- (3) The relevant behavior, if any, noted during the observation of the student and the relationship of that behavior to the student's academic functioning;
- (4) Any educationally relevant medical findings;
- (5) Whether:
 - (i) The student does not achieve adequately for the student's age or to meet Vermont grade-level standards in one or more of the basic skill areas, when provided with learning experiences and instruction appropriate for the student's age or grade level expectations; and
 - (ii) The student exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, Vermont standards and grade level expectations or intellectual development consistent with the characteristics of a specific learning disability.
- (6) The determination of the EPT concerning the effects of visual, hearing, or motor disability; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the student's achievement level; and
- (7) If the student has participated in a process that assesses the student's response to scientific, research-based intervention:
 - (i) The instructional strategies used and the student-centered data collected; and
 - (ii) The documentation that the student's parents were notified about:
 - (A) The amount and nature of student performance data that would be collected and the general education services that would be provided;
 - (B) Strategies for increasing the student's rate of learning; and
 - (C) The parent's right to request an evaluation.

2362.2.7 Students Who Are Determined to Have a Disability, But Are Not Eligible for Special Education

- (a) When an EPT determines that a student has a disability, but is not eligible for special education, it shall recommend accommodations, as needed, in such areas as assessment procedures, curriculum, material or programmatic adaptations, behavior management interventions, and supplemental aids and services. These recommendations shall be included in the written Evaluation Plan and Report. The Evaluation Plan and Report for such a student

shall be referred to the student's building administrator who shall arrange for a Section 504 Team to consider whether:

- (1) The student's disability and needs will require a Section 504 Plan or
 - (2) The student's needs can be met within the school's standard instructional conditions and through its educational support system.
- (b) If the EPT determines that the student has a disability, but is not eligible for special education, it may proceed to operate as a Section 504 team to determine whether the child is eligible for reasonable accommodations under Section 504.

2362.2.8 Independent Educational Evaluation (34 CFR §300.502)

An “independent educational evaluation” means an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of the child in question.

- (a) Upon completion of a LEA evaluation, a parent may request an independent educational evaluation at public expense if he or she disagrees with the evaluation obtained by the LEA. Except as provided in this rule, the LEA shall either pay the full cost of the requested evaluation, or ensure that the evaluation is otherwise provided at no cost to the parent.
- (b) A parent is entitled to only one independent educational evaluation at public expense for each evaluation performed by the LEA with which the parent disagrees.
- (c) If a parent requests an independent educational evaluation, the LEA shall, without unnecessary delay, either:
 - (1) Initiate a hearing to show that its evaluation is appropriate; or
 - (2) Ensure that an independent educational evaluation is provided at no cost to the parent.
- (d) An LEA shall provide to a parent who requests an independent educational evaluation, information about where such an evaluation may be obtained.
- (e) Any LEA criteria, under which an independent evaluation may be obtained, including the location of the evaluation and the qualification of the examiner, shall be the same as the criteria that the LEA uses when it initiates an evaluation. Criteria established by an LEA under this section shall not interfere with the parent's right to an independent educational evaluation.

- (f) Except as provided in (d) above, timelines or conditions related to obtaining an independent educational evaluation may not be imposed by the LEA.
- (g) An LEA may pursue mediation or a due process hearing to demonstrate that an independent educational evaluation obtained by a parent does not meet LEA criteria.
- (h) If the LEA initiates a hearing and the final decision is that the district's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at the LEA's expense.
- (i) If a parent requests an independent educational evaluation, the LEA may ask for the parent's reason why he or she objects to the district's evaluation. However, an explanation by the parent may not be required, and the LEA may not unreasonably delay either providing the independent educational evaluation at no cost to the parent or initiating a due process hearing to defend the district's evaluation.
- (j) If the parent obtains an independent educational evaluation at private expense, the results of the evaluation:
 - (1) Shall be considered by the LEA's EPT, if the evaluation meets the district's criteria, whenever it makes any decision with respect to the provision of FAPE to the child; and
 - (2) May be presented as evidence at a hearing regarding the child.
- (k) If a hearing officer requests an independent educational evaluation as part of a hearing, the LEA is responsible for ensuring that the independent evaluation is completed at no cost to the parent.

2363 Individualized Education Programs (IEP) (34 CFR §300.320)

The term “Individualized Education Program” or “IEP” means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this rule and includes:

- (a) A description of all special education services, related services, and supplementary aids and services that the child will need to be able to derive benefit from his or her educational program;
- (b) A description of the special education program; and
- (c) Accommodations and/or modifications necessary for the child to progress in the general education curriculum.

2363.1 Timelines (34 CFR §300.323)

An IEP shall be:

- (a) Developed within thirty days of an initial determination that the child is eligible for special education and related services;
- (b) Revised, as appropriate, to address the results of any re-evaluation for special education and related services.
- (c) In effect before special education and related services are provided to the child;
- (d) In effect at the beginning of each school year unless the child has been determined to be eligible within 30 days prior to the first day of school, in which case subparagraph (a) above applies; and
- (e) Implemented as soon as possible following the IEP meeting.

2363.2 Responsibility of LEAs for IEPs

Except as otherwise provided by these rules, each LEA shall ensure that an IEP is developed and implemented by the responsible LEA for each eligible child residing and attending public school in that district.

2363.3 IEP Team (34 CFR §300.321)

- (a) The LEA shall ensure that the IEP team for each eligible child includes:
- (1) A local education agency representative (LEA Representative) who:
 - (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - (ii) Is knowledgeable about the general curriculum;
 - (iii) Is knowledgeable about the availability of resources of the LEA;
 - (iv) An LEA representative may designate any LEA personnel member of the IEP Team to also serve as the LEA representative, if the criteria in subsections (i), (ii) and (iii) are satisfied; and
 - (2) Not fewer than one special education teacher of the child, or if appropriate, not fewer than one special education service provider for the child;
 - (3) Not fewer than one general education teacher of the child, to the extent appropriate, if the child is, or may be, participating in the general education environment. The teacher shall, to the extent appropriate, participate in the development of the IEP of the child including the determination of appropriate positive behavioral interventions and strategies, supplementary aids and services, program modifications, supports for school personnel that will be provided to allow the child an opportunity for participation and progress in the general curriculum and the attainment of annual IEP goals;
 - (4) At the discretion of the parent or the LEA, other individuals who, in the opinion of the parents or LEA, have knowledge or special expertise regarding the child, including related services personnel, as appropriate;
 - (5) An individual who can interpret the instructional implications of evaluation results, who also may be a member of the team as described in sections (1), (2), (3) and (4) above;
 - (6) The parent(s), guardian or educational surrogate parent of the child;
 - (7) If appropriate, the child;
 - (8) In the case of a child with a specific learning disability, at least one person qualified to conduct individualized diagnostic examinations of children, such as a school

psychologist, speech-language pathologist, special education teacher, or remedial reading teacher: and

- (9) In the case of a child previously served under the Children's Integrated Services/Early Intervention (CIS/EI), at the request of the parent, the Part C service coordinator or other representatives of the Part C system may be invited to assist in the smooth transition of special education services. Parents shall be notified of their right to request such an invitation.
- (b) Additional participants when the transition services of the student will be discussed.
- (1) Not later than the IEP to be in effect when a student is age 16 (or younger, if determined appropriate by the IEP team), the LEA shall continue inviting the student to attend his/her IEP meetings to discuss transition services.
 - (2) If the student does not attend the IEP meeting when invited, the LEA shall take other steps to ensure that the student's preferences and interests are considered.
 - (3) In implementing the requirements with respect to transition services, the LEA also shall invite a representative of any other agency that is likely to be responsible for providing or paying for such services.
 - (4) If an agency invited to send a representative to a meeting does not do so, the LEA shall take other steps to obtain participation of the other agency in the planning of any transition services.
- (c) IEP Team attendance
- (1) A member of the IEP Team is not required to attend an IEP meeting, in whole or in part, if the parent of the child and the local educational agency agree, in writing, that the attendance of such member is not necessary because the member's area of curriculum or related services is not being modified or discussed in the meeting.
 - (2) A member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, when the parent and local education agency agree, in writing, that a team member may be excused from the IEP meeting in which the member's area of curriculum or related services is being discussed. This agreement requires that the excused member submit, in writing to the parent and IEP Team, their input into the IEP development prior to the IEP meeting.

(d) Decisions by the IEP team

If the team cannot reach consensus, the LEA Representative shall determine the contents of the IEP pursuant to Rule 2363.7 and shall notify the parents of their rights to revoke consent pursuant to Rule 2363.8(e), seek mediation, file an administrative complaint or request a due process hearing.

2363.4 Parent Participation in IEP Meeting (34 CFR §300.322)

- (a) Each LEA shall take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including:
 - (1) Notifying the parents of the meeting early enough that they will have an opportunity to attend; and
 - (2) Scheduling the meeting at a mutually agreed upon time and place.
 - (i) The LEA shall schedule meetings with parents at a mutually agreed upon time and place. When a satisfactory agreement on such time or place cannot be reached, the district shall use other, mutually agreed upon methods to ensure parent participation, including individual or conference telephone calls, or video conferencing.
 - (ii) When the district is unable to arrange the parents' participation, the district shall convene the IEP meeting to meet its obligation to provide appropriate services to the child as set forth in rule 2363.2 of this section.
- (b) A meeting may be conducted without a parent in attendance, if the LEA is unable to convince the parent to attend. Under these circumstances, the LEA shall maintain a record of at least three attempts to arrange a mutually agreed upon time and place, such as:
 - (1) Detailed records of telephone calls made or attempted and the results of those calls;
 - (2) Copies of correspondence sent to the parents and any responses received; and
 - (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.
- (c) The LEA shall take whatever action is necessary to ensure that the parent understands the proceedings at the IEP meeting, including arranging for an interpreter for a parent who is deaf or whose native language is other than English.

- (d) When the student reaches age 17, the LEA shall notify the parent and the student that at age 18, the student, unless he/she is under guardianship, will become an adult under Vermont law. At that time, the LEA shall send a notice to the student of his/her IEP meetings. The parent shall be given a copy of the notice unless, as set forth in rule 2365.1.12, the student is incarcerated. When a student becomes an adult, the parents may attend an IEP meeting at the discretion of the student pursuant to Rule 2363.4(a)(4).
- (e) A teacher or parent may request an IEP meeting at any time when they believe a component of the IEP should be changed. When the LEA receives the request:
 - (1) The LEA shall convene a properly notified IEP meeting within 30 days of receipt of the request, not counting days between the student's regular school sessions or days of school vacation in excess of 5 school days, or
 - (2) Refuse to convene an IEP meeting and shall provide written notice to the parent explaining why the LEA has concluded a meeting is not necessary to ensure the provision of FAPE to the student.
 - (3) The LEA's notice shall inform the parent of his or her right to initiate a due process hearing if the parent disagrees with the LEA's decision not to convene a meeting under this subsection.

2363.5 Notice About IEP Meeting (34 CFR §300.322(b))

- (a) A notice of an IEP meeting shall:
 - (1) Indicate the purpose, time, and location of the meeting;
 - (2) State who will be in attendance; and
 - (3) Inform the parents of the right of the LEA and the parents to invite other people who, in their opinion, have knowledge or special expertise about the child.
- (b) Beginning not later than the first IEP to be in effect when the student is age 16, or younger if appropriate, for a student with a disability the notice shall advise the parents and student of the requirements of Rule 2363.4(b).

2363.6 Development, Review, and Revision of IEP (34 CFR §300.324)

- (a) In the development, review, and revision of an IEP, the IEP team shall consider:
- (1) The strengths of the child and the concerns of the parent for enhancing the education of their child;
 - (2) The results of the initial or most recent evaluation of the child;
 - (3) As appropriate, the results of the child's performance on any general State or district-wide assessment programs; and
 - (4) The academic, developmental, and functional needs of the child
- (b) The IEP team shall also consider the following special factors:
- (1) In the case of a child with limited English proficiency, the language needs of the child as those needs relate to the child's IEP;
 - (2) In the case of a child who is blind or visually impaired, provision for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;
 - (3) The communication needs of the child, and in the case of a child who is deaf or hard of hearing, the child's language and communication needs, opportunities for direct communication with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode;
 - (4) Whether the child requires assistive technology devices and services.
 - (5) When the evaluation data indicates that the student's behavior is impeding his or her learning or the learning of others, positive behavioral interventions and supports, and other strategies to address the behavior and to assist the child to develop skills in areas such as:
 - (i) Social skills;
 - (ii) Anger management; and/or
 - (iii) Conflict resolution.

- (6) Supplementary aids and services, program modifications or supports for the child or school personnel who will be working with the child to help him/her:
 - (i) Attain IEP annual goals;
 - (ii) Progress in the general curriculum;
 - (iii) Participate in extra-curricular activities; and
 - (iv) Be educated in the least restrictive environment.
- (7) Whether a child needs a particular device or service, including an intervention, accommodation, or other program modification, in order for the child to receive a FAPE.
- (c) Each LEA shall ensure that the IEP team:
 - (1) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and
 - (2) Revises the IEP as appropriate to address:
 - (i) A lack of expected progress toward the annual goals;
 - (ii) A lack of expected progress in the general curriculum, if appropriate;
 - (iii) The results of any re-evaluation;
 - (iv) Information about the child provided to, or by, the parents;
 - (v) The child's anticipated needs; or
 - (vi) Other matters.
 - (3) In making changes to the IEP, after the annual review meeting, the parent of the child and the school may agree, in writing, not to convene an IEP meeting for the purpose of making such changes and, instead, may develop a written document to amend or modify the child's current IEP.
 - (i) Parents shall be given a copy of the written agreement document.
- (d) To the extent possible, schools shall encourage the consolidation of re-evaluation meetings and other IEP meetings for the child.

2363.7 Content of IEP (34 CFR §300.320)

An IEP that contains information under one component need not repeat the same information under another component. The IEP for each child with a disability shall include:

- (a) A statement of the child's present levels of academic achievement and functional performance, including:
 - (1) The child's abilities, acquired skills, and strengths;
 - (2) How the child's disability affects the child's involvement and ability to make progress in the general curriculum; or
 - (3) For preschool children, how the disability affects the child's participation in activities appropriate for the child;
 - (4) For children, not later than one year before the child reaches the age 18, a statement that the child has been informed of their rights under these regulations that will transfer to them upon reaching the age of majority (18).
- (b) Measurable annual goals related to the child's present levels of academic and functional performance which shall:
 - (1) Be written as measurable short-term objectives or benchmarks with projected dates for accomplishment, including a description of the evaluation procedures to be used to measure the child's progress towards meeting the short-term objectives or benchmarks;
 - (2) Enable the child to be involved in and progress, to the extent appropriate, in the same curriculum as children without disabilities. For preschool children, goals shall include participation in activities appropriate for children without disabilities;
 - (3) Enable the child to meet other educational needs that result from his or her disability;
 - (4) Be accompanied by a method of reporting the child's progress to the parents at least as often as other parents in the school receive progress reports. A progress report shall inform parents of:
 - (i) Their child's progress toward the annual goals; and
 - (ii) The extent to which the progress is sufficient to enable the child to achieve the goals by the end of the year.

- (c) Special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of individual accommodations, program modifications, or supports that will be provided for school personnel to enable the child:
 - (1) To advance appropriately toward attaining his or her IEP annual goals;
 - (2) To be involved in and progress in the general curriculum, to participate in extra-curricular and other non-academic activities and in physical education services pursuant to the requirements in Rule 2360.2.
 - (3) To be educated and participate with a variety of children who do and do not have disabilities.
- (d) The projected date for the beginning of the services and modifications, the title of the service provider, anticipated frequency, location, and duration of those services and modifications;
- (e) The IEP Team shall determine the child's placement in accordance with Rule 2364.3. The IEP shall also include an explanation of the extent, if any, to which the child will not participate with children without disabilities in a general education class, general curriculum, extracurricular and other non-academic activities;
- (f) Where the student's placement is a residential placement pursuant to Rule 2366.9, the student's IEP shall contain annual goals and short-term objectives or benchmarks designed to reintegrate the student into a local LEA placement, and a description of how they will lead to reintegration.
- (g) A statement of any individual accommodations in the administration of State, district-wide, or local assessments of student achievement that are needed in order for the child to participate in the assessment;
 - (1) If the IEP team determines that the child will not participate in a particular State or district-wide assessment of student achievement (or part of an assessment), a statement of:
 - (i) Why that assessment is not appropriate for the child; and
 - (ii) How the child will be assessed.
- (h) A description of any extended school year services (ESY) which the IEP team finds are necessary to provide a FAPE to the student.

- (1) ESY services shall be provided only if a child's IEP team determines that the services are necessary for the provision of FAPE to the child because one or more of the following factors is evident:
 - (i) ESY is essential to permit the student an opportunity to reach reasonably set educational goals;
 - (ii) There has been a significant amount of regression over the past winter, spring and summer vacations and recoupment did not occur within a reasonable amount of time;
 - (iii) The severity of the student's disability presents a danger of substantial regression; or
 - (iv) The student's transition goals require continued programming beyond the school year IEP.
 - (2) An LEA or IEP team may not limit extended school year services to students with particular disabilities.
 - (3) An LEA shall not adopt a policy that limits the type, amount, or duration of ESY services for all children.
- (i) Transition services
- (1) For students, beginning with the first IEP in effect when the child is 16, or younger if determined appropriate by the IEP team, and updated annually thereafter, there shall be:
 - (i) Age appropriate and measurable postsecondary goals based upon age appropriate assessments related to:
 - (A) Education/training;
 - (B) Employment; and
 - (C) If appropriate, independent living.
 - (ii) Evidence that the student's interests and preferences were taken into consideration during the formulation of the goals.
 - (2) Contingent upon prior consent from the parent or adult student, representatives of any agency that is likely to be responsible for providing or paying for transition services to implement the goals, shall be invited to participate in the IEP meeting.

- (3) If a participating agency, other than the LEA, fails to provide the transition services described in the IEP, the LEA shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.
- (4) Nothing in these regulations shall relieve any participating agency of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.
- (5) When a student is going to graduate, a “summary of performance” report shall be written for the student as described at Rule 2362.2.3(g)(i).

2363.8 Consent for Initial Provision of Special Education Services (34 CFR §300.300(b))

- (a) A consent form shall be signed by the parent and received by the LEA prior to the initial provision of IEP services.
- (b) If the parent of a child fails to respond or refuses to consent to services the LEA may not use due process procedures, or mediation, in order to obtain agreement or a ruling that the services may be provided to the child.
- (c) If the parent of the child refuses to consent to the initial provision of special education or related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the LEA:
 - (1) Will not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide the child with the special education and related services for which the LEA requests consent.
 - (2) Is not required to convene an IEP meeting or develop an IEP for the child for the special education and related services for which the LEA requests such consent.
- (d) If the parent provides written consent for the initial provision of IEP services before they have begun and then revokes the consent, the services shall not commence. The student shall remain eligible for services and the LEA may attempt to resolve the matter with the parent by:
 - (1) Discussing the matter through appropriate informal means,
 - (2) Requesting mediation, or

- (3) Requesting that the student be reevaluated to determine if he or she continues to be eligible for special education services. A reevaluation could consist of a review of existing data.
- (e) A parent may revoke consent at any time subsequent to the initial provision of special education and related services. The revocation of consent shall be in writing, on a form provided by the LEA or in any other written form, and should indicate the date of revocation. Upon receipt of such a revocation of consent, the LEA:
 - (1) Shall provide prior written notice to the parent that it is ceasing the provision of special education and related services and then may not continue to provide special education and related services;
 - (2) May not use due process procedures, or mediation, in order to obtain agreement or a ruling that the services may be provided to the child;
 - (3) Will not be considered to be in violation of the requirement to make available a free, appropriate public education to the child for the failure to provide the child with the special education and related services for which the LEA requests consent; and
 - (4) Is not required to convene an IEP Team meeting or develop an IEP for the child after the date of the revocation of consent.

Revocation of consent is not retroactive and the LEA is not required to amend the child's education records to remove any references to the child's prior receipt of special education services.

2363.9 Distribution and Explanation of the IEP Document (34 CFR 300.323(d))

- (a) The student's IEP shall be made accessible to each general education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and
- (b) Each teacher and provider described above shall be informed of:
 - (1) His or her specific responsibilities related to implementing the child's IEP; and
 - (2) The specific accommodations, modifications, and supports that shall be provided for the child in accordance with the IEP.

- (c) The LEA shall give the parent a copy of the student's IEP, or amended portions of the IEP, at no cost to the parent.

2363.10 IEP Requirements for Placements by LEAs in Independent Schools or Tutorial Programs (34 CFR §300.325)

- (a) Before an LEA places a student eligible for special education services in, or refers a student to, an independent school, or a tutorial program, the LEA shall initiate and conduct a meeting to develop an IEP for the student that reflects the change in placement.
- (b) The LEA's placement shall be at no cost to the parents and the independent school or tutorial program shall provide an education that meets the standards that apply to education provided by the local LEA.
 - (1) Placements by LEAs in independent schools shall be in schools that have been approved according to Rule 2228.
 - (2) Placements by LEAs in tutorial programs shall be in programs that have been approved according to Rule 2230.
- (c) The LEA shall ensure that a representative of the independent school or tutorial program either attends the meeting or is able to participate by other methods including individual or conference telephone calls.
- (d) After a child with a disability enters an independent school or a tutorial program, any meetings to review and revise the student's IEP may be initiated and conducted by the school or tutorial program in accordance with the written agreement as entered into in conformance with Rule 2228.4.2. If the independent school or tutorial program initiates and conducts these meetings, the LEA shall ensure, to the extent required by Rule 2363.4, that an LEA Representative is involved in any decision about the student's IEP and agrees to any proposed changes in the IEP before those changes are implemented. Parent participation shall be required and documented as set forth in Rule 2363.4.
- (e) When an independent school or a tutorial program implements a student's IEP, responsibility for compliance with the special education regulations with respect to that student remains with the LEA.

- (f) A child placed in an independent school or a tutorial program by an LEA shall retain all of the rights of a child on an IEP who is attending a public school.

2363.11 IEP For A Student Moving Into The LEA When The Student Has Been Eligible Or Was Being Evaluated For Special Education In Another State Or In Another Vermont LEA (34 CFR §300.323(e) and (f))

- (a) Child Moving From Another Vermont LEA — If a child eligible for special education services moves from one Vermont LEA to another, the receiving LEA shall either adopt the IEP the former LEA developed for the child or develop a new IEP for the child. The receiving LEA shall implement the current IEP to the extent possible until a new IEP is developed. In the absence of exceptional circumstances, IEP services shall commence within one week of the time the child enrolls in the receiving LEA.
- (b) Child Moving From an Out-Of-State LEA — If a child eligible for special education services in another state moves into a Vermont LEA within the same school year, the receiving LEA, in consultation with the parent, shall provide a FAPE to that child, including services comparable to those described in the child's IEP from the previous school, until the Vermont LEA:
 - (1) Conducts an evaluation to determine initial eligibility in Vermont; and
 - (2) If eligible, develops, adopts, and implements a new IEP.
- (c) Child Moving During an Evaluation Process – If a child transfers to another LEA within the state or moves into a Vermont school from out of state, the completion of the evaluation shall be coordinated and completed by the new school, including documentation with the parents of the child of the expected completion date of the evaluation should it differ from the original expected date of completion. This evaluation should be completed as expeditiously as possible.
- (d) To facilitate the transition of a child described in (a) and (b) of this rule the previous LEA and the child's new LEA shall take reasonable steps to promptly send and receive, in accordance with the provisions of Family Education Rights and Privacy Act (FERPA), the child's records, including the IEP, supporting documents and any other records relating to the child's special education and related services. This rule may not be interpreted to limit either the previous

Vocational-Technical Education

2370 Definitions

1. **Adult technical education** - means technical education provided to an adult student that is not part of a course of study leading to a diploma or degree.
2. **Adult student** - means a resident of Vermont, of any age, who has received a high school diploma.
3. **Career academy** - means a small learning community that serves a full range of students; that entails a college preparatory curriculum developed in the context of a career cluster; that integrates academic and technical instruction with work-based learning; that involves partnerships with employers, the community and higher education to create multiple opportunities and options for students to pursue careers; and that students can attend for two years.
4. **Career cluster** - is a broad career area as defined by the U.S. Department of Education that includes occupations that share a common a common set of foundation skills.
5. **Commissioner** - means the commissioner of the Vermont Department of Education or his/her designee.
6. **Collaborative program** - means a technical education program, a number of technical education programs or programs at a technical education center offered pursuant to an agreement between two or more supervisory districts or unions in accordance with 16 V.S.A. §267, for the purpose of co-operatively providing programs and services at a previously negotiated cost.
7. **Comprehensive high school** - is a high school other than a high school with a technical center that offers state approved technical education course(s) of study.
8. **Course of study** - means the units of academic, workplace, and occupational skill instruction of a career and technical education program that teach to the approved competency list and an appropriate student organization that supports the program and teaches citizenship and leadership skills.
9. **Full-time equivalent student (FTE)** - means a student who is enrolled an average of at least two an hundred forty minutes per day for a school year in a career and technical education program's course of study.

10. **Governance board** - means the school board that is legally responsible for operating a technical center or comprehensive high school.
11. **Net costs** - means the actual costs of providing technical education programs less federal and state sources of revenue.
12. **Overhead costs** - means the costs in a technical center associated with governance, financial services, student services shared with the home school, and plant maintenance and operation.
13. **Post-secondary technical education program** - means a program offered by a state-approved post-secondary institution that leads to a certificate or an associate degree and that prepares students for employment in specific occupations.
14. **Pre-tech programs** - means state-approved programs that provide students with preparatory services such as career counseling, academic assessment, applied academic instruction, and introductory career content knowledge and skills to better prepare them to choose and pursue a technical education program.
15. **Receiving district** - means a school district or a regional technical center school district receiving tuition on behalf of pupils to whom it furnishes technical education. The classification of a school district as a receiving district is not altered by reason of the participation of that district in a contract for management of the technical center under a collaborative agreement.
16. **Regional board** - refers to a board that represents all high schools in a region and is responsible for oversight of career and technical education in the region. The regional board can be a regional advisory board or a regional governance board.
17. **Satellite program** - is a technical education program that is offered by a technical center at a site outside the technical center facilities.
18. **Sending district** - means a school district paying tuition on behalf of pupils to a school district which furnishes technical education courses.
19. **Service region** - means the geographical area assigned by the state board to a technical center for which it is the provider of technical education.
20. **Special populations** - means those individuals who are defined as having special needs in the *Americans with Disabilities Act*, 28 C.F.R. §35.104, including:

Individuals with disabilities - means individuals with a physical or mental impairment that substantially limits one or more of the major life activities, a record of such an impairment, or being regarded as having an impairment.

- (1) The phrase physical or mental impairment means:
 - A. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine;
 - B. Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- (2) The phrase physical or mental impairment includes, but is not limited to, such contagious and non-contagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.
- (3) The phrase physical or mental impairment does not include homosexuality or bisexuality.
- (4) The phrase, "Major Life Activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- (5) The phrase, "has a record of such an impairment" means has a history of, or has been mis-classified as having, a mental or physical impairment that substantially limits one or more major life activities.
- (6) The phrase, "is regarded as having an impairment" means --
 - A. Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a public entity as constituting such limitation
 - B. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such an impairment; or
 - C. Has one of the impairments defined in paragraph (1) of this definition but is treated by a public entity as having such an impairment.
- (7) The term, "Disability" does not include---
 - A. Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;
 - B. Compulsive gambling, kleptomania, or pyromania; or
 - C. Psychoactive substance used disorder resulting from current illegal use of drugs.

Individuals from economically disadvantaged families, including foster children - means individuals who are in families that are determined to be low-income according to the latest available data from the Department of Commerce.

Individual preparing for non-traditional training and employment - means individuals enrolled in programs that lead to occupations in which one gender constitutes less than 25 percent of their workforce and are declared "Non-traditional" by the *Crosswalk of 1998 Nontraditional Occupations with Classification of Instructional Program Codes*.

Single parents - means individuals who are single heads of households that include children who are minors and unmarried pregnant women.

Displaced homemakers - means individuals who are re-entering the workforce after being a full-time parent.

Educationally disadvantaged individuals - means individuals who are dropouts or potential dropouts, individuals who are migrants, individuals who score below the 25th percentile on a standardized achievement or aptitude test, individuals whose secondary school grades are below 2.0 on a 4.0 scale, or who fails to attain minimum academic competencies. This definition does not include individuals with learning disabilities.

Individuals with limited English proficiency - means individuals whose native language is other than English and for whom English is a second language.

21. **State Board** - means the Vermont State Board of Education.
22. **Student** - when it appears without a qualifier (such as adult, post-secondary, etc.) means a Vermont resident of any age who has not been awarded a high school diploma. The holder of a GED (General Educational Development) Certificate is not considered to have been awarded a diploma.
23. **Student apprenticeship** - means a skill-based education program that coordinates and integrates classroom instruction with a structured work-based learning experience. Competencies for the program shall be approved by the state board and a student apprentice shall receive academic instruction and training in a skilled occupation which will prepare the student for post-secondary education, advanced training, or direct employment in a position higher than entry level.
24. **Student organization** - means an organization of secondary students relating to, complementing, and enriching a particular technical education program in which they are enrolled and that is designed to offer such students experience in leadership, citizenship, and occupational skills.
25. **Technical center** - means any of the 15 regional technical centers operating with state support on January 1, 2000 and any others so designated thereafter by rule of the State

Board.

- 26. **Technical education** - means any career and technical education programming designed to teach the academic, workplace, and occupational skills necessary for employment.
- 28. **Tech prep** - means a curriculum that (a) includes a secondary and post-secondary or apprenticeship curriculum, (b) involves up to two years of secondary programming and two years of post-secondary programming, (c) blends high level academic and technical courses, (d) culminates with an associate degree or a certificate after the completion of the post-secondary portion of the curriculum, and (e) emphasizes career planning and development that leads to employment.
- 29. **Tuition** - means an amount assessed to school districts based on the six semester average FTE enrollment from those towns to cover the costs of providing technical education that is not covered by federal, state or other sources of funds.

2371 Entitlement to Technical Education

- 1. An individual is entitled to enroll in and complete a technical education program of part-time or full-time duration if the individual:
 - A. is at least in the 11th grade in a graded school or is at least 16 in a non-graded situation
 - B. does not have a high school diploma
 - C. applies for the program, and
 - D. meets the admissions criteria set forth in the admissions policies of the technical center and the technical education program and is accepted in the program.
- 2. A student who is in the 10th grade may with the support of the sending school request admission to a technical center from the school offering the program. The school offering the program can admit the student if there is space available and if it is determined that the student has the maturity to successfully participate in the technical education program and meets admissions criteria.
- 3. Technical education programs shall not be available to students below age 16 in a non-graded educational setting or below the 10th grade without the prior approval of the commissioner.
- 4. Students in the 9th and 10th grades or below the age of 16 in a non-graded educational setting may be enrolled in pre-tech programs at the discretion of their sending school or, in the case of students not enrolled in public education, at the discretion of the school district in which they reside.
- 5. Students who have completed a technical education program may enroll in additional

technical education programming at the discretion of their sending schools if it is judged to best meet their career preparation needs and they are accepted by the technical center or comprehensive high school.

6. Enrollment in a high school shall not be a precondition for a student without a diploma to enroll in a technical education center. When a student who is not enrolled in a secondary school applies directly to and is accepted by a technical center, the school district of residence shall be notified within 10 days of acceptance. Funding for this enrollment shall be in accordance with existing statute.
7. The technical center shall provide program information to potential students within its region listing admissions requirements, employment opportunities, and other relevant information to assist the student in making a decision to enroll. Sending schools shall provide a reasonable opportunity for technical centers and comprehensive high schools to inform students in grades 7 through 12 of the educational opportunities available to them in the region.
8. A student's regular high school schedule or program shall be adjusted as necessary to ensure that there are not barriers to enrolling in a technical education program. Graduation requirements in excess of state minimum requirements shall be adjusted when, through no fault of the student, they present a barrier to enrollment in the technical education program of the student's choice.

2372. Statewide provision of technical education

1. Provision of technical education
Technical education shall be provided statewide through seventeen service regions. Each service region shall be served by a technical center(s) and/or comprehensive high school(s). Before a school operates a technical education program(s), it shall obtain the support of the regional board overseeing technical education in the region and approval from the state board. All technical education programs approved by the state board shall be accessible to all students within the region and the state as stipulated by these regulations.

2. Area Technical Centers

The state board may designate a school site as a technical center when the proposed center:

- A. offers state-approved secondary technical education programs in no fewer than five of the following career clusters beginning at the 11th grade level:
 - Agriculture & Natural Resources
 - Construction
 - Manufacturing
 - Logistics, Transportation, and Distribution Services
 - Information Technology Services
 - Wholesale/Retail Sales and Services
 - Financial Services
 - Hospitality and Tourism
 - Business and Administrative Services
 - Health Services
 - Human Services
 - Arts and Communications
 - Legal and Protective Services
 - Scientific Research, Engineering, and Technical Services
 - Education and Training Services
 - Public Administration/Government Services
- B. is necessary to meet the technical education needs of the region,
- C. develops admission policies that articulate the skills students need to participate successfully in and benefit from its technical education programs and that ensure equal access to these programs to all students from the service region served by the center,
- D. offers applied academic, employability and technical skill training and provide career guidance, co-op/apprenticeship options, career and technical student organizations, and appropriate adult technical education programming, and
- E. has or will have a governance board as provided by state statute.

2373 Adult and Post-secondary Technical Education Programming

1. Adult Technical Education

Each technical center shall provide technical education and training programming that addresses the needs of adults and businesses in its region. Adult coordinators shall work closely with the regional workforce investment board and other organizations to identify the technical education and training needs of adults in the region. Courses and programs leading to industry credentials shall be developed and offered to address these regional needs.

2. Enrollment of Adult Students

- A. Adult students shall be enrolled in any secondary technical education program within

Vermont on a space available basis as long as they meet the admission requirements for all students entering that program. A technical center may charge up to 40 percent of the actual costs per student of offering the program. Technical centers shall determine whether space is available no later than two weeks prior to the first day of operation of the program.

- B. Adult students who wish to be guaranteed enrollment in a secondary technical education program may be admitted but can be charged the full amount of the actual cost per student of operating the program.
 - C. Secondary programs may be developed for students who are not of a traditional age. Students without diplomas shall be funded as in any other secondary programs as long as the program is designed to lead to a diploma. Adults with diplomas who enroll in courses or programs created specifically for non-traditional aged students shall be charged as in any other secondary program.
3. Customized Training for Businesses within the Region
- Technical centers may offer customized training to meet the needs of area businesses. Fees for such services shall be used to defray the costs of administration, instruction and use of facilities.
4. Post-secondary Technical Education
- Each technical center shall coordinate use of the center with the Vermont State Colleges, other state programs including licensing, job training, and apprenticeship programs, and with other approved institutions for the provision of post-secondary technical education programs and charge fees not exceeding actual costs of operating the programs. The offering of post-secondary programs shall not increase the costs of offering secondary technical education programs.

2374 Service Regions

1. Assignment to Service Regions
- School districts and independent high schools shall be assigned to a technical education service region as follows:
- A. Barre Regional Vocational Technical Center: Spaulding UHSD #41, Barre City, Barre Town, Twinfield USD #33, Marshfield, Plainfield, Harwood UHSD #19, Duxbury, Fayston, Moretown, Waitsfield, Warren, Waterbury, UHSD #32, Berlin, Calais, East Montpelier, Middlesex, Worcester, Cabot High School, Montpelier High School.
 - B. Chittenden County Service Region: Burlington Technical Center, Center for Technology-Essex: Champlain Valley UHSD #15, Charlotte, Hinesburg, Shelburne, Williston, Mt. Mansfield UHSD #17, Bolton, Huntington, Jericho, Richmond, Underhill ID, Underhill Town, Burlington High School, Colchester High School, Milton High School, South Burlington High School, Bellows Free Academy-Fairfax, Fairfax,

- Fletcher, Georgia, Winooski High School, Essex High School, Essex Junction, Essex Town, Grand Isle, North Hero, St. George, South Hero, Westford.
- C. Cold Hollow Career Center: Enosburg Falls High School, Richford High School, Bakersfield, Berkshire, Montgomery.
- D. Hartford Area Career and Technology Center: Woodstock UHSD #4, Barnard, Bridgewater, Pomfret, Reading, Killington, Woodstock, Hartford High School, Windsor High School, Hartland, Norwich, Weathersfield, West Windsor.
- E. Green Mountain Technology and Career Center: Hazen UHSD #26, Greensboro, Hardwick, Woodbury, Lamoille UHSD #18, Belvidere, Cambridge, Eden, Hyde Park, Johnson, Waterville, Craftsbury Academy, Peoples' Academy-Morristown, Stowe High School, Elmore, Fletcher, Stannard, Wolcott.
- F. North Country Career Center: Lake Region UHSD #24, Albany, Barton ID, Brownington, Glover, Irasburg, Orleans ID, Westmore, North Country UHSD #22, Brighton, Charleston, Derby, Holland, Jay, Lowell, Morgan, Newport City, Newport Town, Troy, Westfield, Coventry.
- G. Northwest Technical Center: Bellows Free Academy-St. Albans, Missisquoi Valley UHSD #7, Franklin, Highgate, Swanton, Alburg, Fairfield, Georgia, Isle LaMotte, St. Albans City, St. Albans Town, Sheldon.
- H. Patricia A. Hannaford Career Center: Mt. Abraham UHSD #28, Bristol, Lincoln, Monkton, New Haven, Starksboro, Vergennes UHSD #5, Addison, Ferrisburg, Panton, Vergennes ID, Waltham, Middlebury UHSD #3, Bridport, Cornwall, Middlebury ID, Ripton, Salisbury, Shoreham, Weybridge.
- I. Randolph Area Vocational Center: Randolph UHSD #2, Braintree, Brookfield, Randolph, Whitcomb High School-Bethel, Chelsea High School, Northfield High School, Rochester High School, Royalton High School, Williamstown High School, Granville, Hancock, Orange, Pittsfield, Roxbury, Sharon, Strafford, Stockbridge, Tunbridge, Washington.
- J. River Bend Career and Technical Center: USD #36 (Corinth, Topsham), OxBow UHSD #30, Bradford ID, Newbury, Blue Mt. USD #21, Groton, Ryegate, Wells River, Thetford, Rivendell Interstate School District, Fairlee, Vershire, West Fairlee.
- K. Southeastern Vermont Career Education Center: Brattleboro UHSD #6 Brattleboro, Dummerston, Guilford, Putney, Vernon, Leland and Gray UHSD #34, Brookline, Jamaica, Newfane, Townshend, Windham, *Bellows Falls UHSD #27, Athens, Grafton, Rockingham, Westminster, Whitingham High School, Wilmington High School, Dover, Marlboro, Stratton, Wardsboro, Winhall.
- L. Southwest Vermont Career Development Center: Mt. Anthony UHSD #14, Bennington ID, North Bennington ID, Pownal, Shaftsbury, Woodford, Arlington High School, Burr and Burton Academy, Danby, Dorset, Halifax, Manchester, Mt. Tabor, Pawlet, Readsboro, Rupert, Sandgate, Searsburg, Stamford, Sunderland.
- M. St. Johnsbury Service Region - regional programs offered at Applied Technology Center at St. Johnsbury Academy, Lyndon Institute Technical Center: Concord High

School, Danville High School, Union #37, Sheffield, Wheelock, Barnet, Burke, East Haven, Granby, Guildhall, Kirby, Lunenburg, Lyndon, Maidstone, Newark, Peacham, St. Johnbury, Sutton, Walden, Waterford, Victory.

- N. Stafford Technical Center: Fair Haven UHSD #16, Benson, Castleton, Fair Haven, Orwell, West Haven, Mill River USD #40, Clarendon, Shrewsbury, Wallingford, Otter Valley UHSD #8, Brandon, Goshen, Leicester, Pittsford, Sudbury, Whiting, Poultney High School, Proctor High School, Rutland High School, West Rutland School, Chittenden, Hubbardton, Ira, Mendon, Middletown Springs, Plymouth, Rutland Town, Tinmouth, Wells.
- O. River Valley Technical Center: Green Mountain UHSD #35, Andover, Cavendish, Chester, Black River USD #39, Ludlow, Mt. Holly, Springfield High School, Baltimore, Landgrove, Londonderry, Peru, Weston, *Bellows Falls UHSD #27, Athens, Grafton, Rockingham, Westminster.
- P. Canaan School: Bloomfield, Brunswick, Canaan, Lemington, Norton. Canaan School does not send to a regional technical center because it is geographically isolated and offers technical education programs as a comprehensive high school.

* Students enrolled in UHSD #27 may chose to go to Southeastern Vermont Career Education Center (Brattleboro), or River Valley Technical Center (Springfield).

- 2. Change in Service Region When Requested by a School District
 - A. To request a change in service region, a school or school district shall notify the commissioner in writing.
 - B. The commissioner, prior to making a recommendation to the state board, shall consult with the school districts, and the regional advisory boards that would be affected by a change in sending district service region assignment(s).
 - C. The State Board shall grant a request by a school or school district to change service regions if:
 - (1) The change will not significantly affect technical center program enrollments,
 - (2) The change will not significantly increase the distance between the technical center and the high school,
 - (3) The change will provide more opportunities to students, and
 - (4) The fiscal impact of the change will not be so great that the technical centers affected by the change cannot accommodate it and that other schools in a service region will have to assume a significantly larger portion of the costs of operating the technical center.
 - D. School districts that request a change in service region shall notify the affected centers and the Department of Education prior to November 1st of the preceding year.
 - E. Students may complete their course of study at the school in which they began the program regardless of any change in service region granted their sending school.

3. Students Attending Technical Education Outside their Service Region
 - A. Secondary students may apply for enrollment into programs offered at technical centers outside their service region when the center in their service region does not offer the program in which they wish to enroll or they are not able to enroll in the program of their choice. The school district of the students' residence shall pay tuition for that enrollment. Districts shall not be required to provide transportation to and from the technical center selected by the student.
 - B. Secondary students attending public/independent high schools outside their service region may attend the technical center assigned to the academic high school in which they are enrolled. Sending districts shall pay the tuition but are not required to provide transportation to and from the technical center.
 - C. Secondary students not attending an academic high school shall attend the technical center to which their district of residence has been assigned.

2375 Governance

1. A technical center shall be owned and governed by a board that is provided for and constituted in a fashion prescribed by state statute. These are:
 - A. School Board of the Home School

A technical center shall be owned and governed by the school board for the high school district in which the technical center is located pursuant to 16 V.S.A. § 1541 unless the region has received approval from the state board of education and the region's electorate to create a regional technical center school district for purposes of the governing and operating the center.
 - B. Regional Board

A region may create a regional technical center school district and a regional governance board to own, govern, and operate the center by following the procedures identified in 16 V.S.A. § 1572-1576.
2. Responsibilities of the board which manages a technical center:

A board that operates a technical center shall:

 - A. Provide secondary and adult technical education services,
 - B. Annually set a budget for operation of the center,
 - C. Establish the secondary and adult curriculum of the regional center, including courses of study offered,
 - D. Provide for the decentralization of its technical programs, including the creation of rotating and satellite programs, whenever advantageous to the service region and/or for the expansion of distance learning opportunities,
 - E. Employ and, as need requires, dismiss an adult services coordinator and a director of technical education and such qualified staff as is necessary to provide programs and services,

- F. Develop criteria and priorities for student admission into technical education programs and services that address secondary students, school dropouts, adult students,
 - G. Annually evaluate the success of the center in serving all parts of its service region and in offering employment related adult training and education programs,
 - H. Annually evaluate the quality of each course of study and service offered by the center,
 - I. Coordinate use of the center with the Vermont state colleges, other state programs including licensing, job training and apprenticeship programs, and with other approved institutions, for the provision of post-secondary technical education programs and charge fees not exceeding the direct and indirect costs of the use of the center,
 - J. Offer programs designed to acquaint prospective students with technical programs, but which do not require an enrollment commitment,
 - K. Establish fees for building and equipment use after giving due consideration to the efficient and cost effective use of the center,
 - L. Establish a technical tuition,
 - M. Make the center's facilities and equipment available for providing technical education programs to adults, and
 - N. Use and maintain all facilities designed and constructed for technical education in a manner consistent with that purpose, except when those facilities are determined annually by the regional advisory board to not be needed for technical education and the commissioner or his/her designee so consents.
3. In addition to these responsibilities, the regional board of a regional technical center school district shall have the duties and authority identified in 16 V.S.A. §1577:
- A. Determine the educational policies of the center. Policies shall be of general application to the center, shall be in writing, codified, and made available to the public. Board policies shall be adopted at regular or special meetings. A board shall give public notice of its intent to adopt a board policy, stating the substance of the proposed policy, at least ten days prior to its adoption,
 - B. Approve or disapprove rules and regulations that relate to the conduct and management of the center,
 - C. Take any action required for the sound administration of the center
 - D. Have the possession, care, control, and management of the property of the center,
 - E. Keep the center buildings and grounds in good repair, suitably equipped, insured and in save and sanitary condition at all times,
 - F. Lease or purchase real and personal property, and to sell, relocate, or discontinue use of real and personal property,
 - G. Establish and maintain an adequate system of financial disbursement, accounting, control, and reporting procedures,
 - H. Sue and be sued,
 - I. Conduct its budget adoption in accordance with the terms approved by the state board,
 - J. Employ such persons as may be required to carry out the work of the center and

dismiss any employee when necessary,

K. Provide all textbooks, learning materials, equipment and supplies,

L. Borrow money by issuance of bonds or notes, not in excess of anticipated revenue for the school year,

M. Apply for grants and to accept and expand grants and gifts,

N. Present informational materials to the electorate on any matter voted, and

O. Incur indebtedness under the conditions of 16 V.S.A. §1579.

4. Regional Advisory Board

When a technical center is governed by a high school board, it shall establish a regional advisory board. When the state board designates a service region for two or more comprehensive high schools, the boards of the high schools shall establish a joint regional advisory board. A regional advisory board shall include the membership required under 16 V.S.A. §1542. The regional advisory board shall meet at least four times during the school year. The purposes of the meetings are to review technical education programs and services and make written recommendations to the board/s operating technical education programs concerning:

A. the quality of services and programs for secondary and adult students,

B. the alignment of programs and services to available jobs,

C. the reasonableness of fees set for rental of facilities and equipment,

D. the appropriateness of the budget for operating the programs,

E. the success of the programs in serving all parts of the region, and

F. the adequacy of the provision to each student, beginning in grade nine, of appropriate career counseling and technical education information.

5. Disagreements

When a school board operating technical education programs rejects a written recommendation of a regional advisory board, or fails to adopt such a recommendation after 30 days, it shall notify the advisory board and the commissioner or designee in writing, stating its reason.

6. Workforce Investment Board

A regional advisory board, with the consent of the receiving district school board and the regional workforce investment board, may delegate its responsibilities to the regional workforce investment board. The receiving district school board may terminate this delegation by reconstituting the regional advisory board under the conditions set out in 16 V.S.A. § 1542.

7. Approval of technical education programs

The regional board for a technical education region shall be the body that approves a technical center or high school to offer a career and technical education program in that

region. In making that decision it shall consider the proposed programming under the following criteria:

- A. There is a demonstrated need in the region for the skills taught by the program,
 - B. The school proposing the program is the most appropriate site for the program, and
 - C. The program is made accessible to all students in the region through establishing appropriate systems for transportation and scheduling.
8. Responsibilities of sending school districts
- A. Sending districts shall provide students in grades 11 and 12 with a genuine opportunity to participate fully and to benefit from technical education.
 - B. Sending schools shall provide transportation for students enrolled in technical education at the center(s) assigned to the schools.
 - C. If the regional technical education center serving the sending school does not offer the program desired by a student or that program has a full enrollment, the sending district shall enroll that student in another center in which the program is available. The school district in which the student is a resident shall pay tuition on behalf of that student who applies and is accepted but the sending school is not required to provide transportation.
 - D. Schools shall provide on request names and addresses of students to all schools in the region offering state-approved career and technical education programs for the limited purpose of the those schools providing information to students and parents about the programs.
 - E. Prior to admission to a technical education program, the sending school shall make available to the technical center staff the student records of accepted students. The record must include information on the student's grades in the basic academic skills and the student's performance on state assessments.
 - F. Sending schools districts shall provide comprehensive career counseling and applied academics to students in the 9th and 10th grades to prepare students to appropriately elect and succeed in technical education programs.

2376 School Quality Procedures

1. For purposes of 16 V.S.A. §165, a technical center is a school.
2. Annual Plan

School districts applying for state and/or federal assistance for technical education shall, in accordance with a schedule and on forms prescribed by the commissioner, submit an annual plan that describes their technical education programs and services. The plan shall include information and assurances that permit the commissioner to judge whether the technical education programs:

 - A. Meet state and federal statutory and regulatory requirements,
 - B. Are available and accessible throughout a center's service region for secondary and

adult students,

- C. Make provisions for appropriate fiscal control and fiscal accountability and assure that annual statistical, descriptive, and financial reports will be submitted as required by the commissioner,
 - D. Ensure equal employment, educational opportunities, and affirmative action regardless of race, creed, color, national origin, gender, age, handicapping condition and/or disability, or sexual orientation, in compliance with state and federal laws, and
 - E. Make available information, programs and services to all students within the service region.
3. Action Plan
- A school district receiving state and federal support for technical education shall annually update an action plan. The action plan shall:
- A. Meet state and federal requirements for including specific stakeholders in its development, carrying out a review student performance, and identifying strategies to improve student performance
 - B. Be filed with the annual plan for the upcoming year.
4. School Report
- A technical center receiving state and federal support for technical education shall annually issue a school report that identifies levels of student performance against school standards, accomplishments of the school, and the result of action plans. Comprehensive high schools shall provide this information on their technical education programming in their school report.

2377 Technical Education Program Evaluations

- 1. School and program evaluations shall satisfy requirements in 16 V.S.A., §§ 1533 and 1534.
- 2. The commissioner, in consultation with local administrators, shall schedule technical center evaluations so that all schools with state approved technical education programs are evaluated at least every five years.
- 3. A school offering state-approved technical education programs shall schedule a review of safety conditions conducted by the Department of Labor and Industry within the six months leading to each evaluation.
- 4. Evaluations shall be conducted in a manner and format prescribed by the commissioner.

2378 Safety in Technical Programs

1. Each school district that receives federal and/or state funds for technical education and/or pre-technical education shall develop a program of safety for every program, ensure that it is properly implemented, and provide oversight to ensure that the quality of the safety program is maintained.
2. Each school with a state approved technical education program shall limit the number of students to 16 per class during laboratory or field experiences when the program has as part of its curriculum one or more activities identified in hazardous occupations defined by Department of Labor Child Labor Bulletin 101. When a paraprofessional is added to the instructional staff, a total of 21 students per class may be assigned. Hazardous occupations include the following and any others as may be specified in amendments to Bulletin 101 in the future:
 - Manufacturing and storing explosives
 - Motor-vehicle driving and outside helper
 - Coal mining
 - Logging and sawmilling
 - Power-driven woodworking machines
 - Exposure to radioactive substances
 - Power-driven hoisting apparatus
 - Power-driven metal-forming punching and shearing machines
 - Mining other than coal mining
 - Slaughtering, or meatpacking, processing or rendering
 - Power-driven bakery machines
 - Manufacturing brick, tile, and kindred products
 - Power-driven circular saws, band saws, and guillotine shears
 - Wrecking, demolition, and ship-breaking operations
 - Roofing operators
 - Excavation operations
 - Specific operations within agriculture
3. Each school with a technical education program shall develop procedures to reach parent(s) or guardian(s) in case of an accident or emergency while students are at school or a school function off school sites.

2379 Required Staffing of Technical Centers

1. A technical center or comprehensive high school with more than five programs shall be eligible in accordance with these rules for state salary assistance for a director, assistant director, guidance coordinator, adult services coordinator, and co-operative

education/student apprenticeship coordinator.

2. Each school board operating a technical education center shall employ a licensed full-time director who is responsible for the administration and supervision of the technical education center. The director shall report directly to the superintendent of schools when the technical center is part of a supervisory union district, to the headmaster, when the center is operated by an independent school, or as specified by the governance structure of the technical center.
3. Each school board operating a technical education center shall employ a licensed technical education guidance coordinator to perform guidance and counseling services. The guidance coordinator shall report to the director of the technical center.
4. Each school board operating a technical education center shall employ a licensed adult services coordinator who shall be responsible for planning, coordinating, and supervising programs and services for adults.
5. Each school board operating a technical education center shall employ a licensed co-operative education/student apprenticeship coordinator to develop and oversee work-based learning opportunities for students enrolled at the technical center.
6. Each school board operating a technical education center shall employ at least one full-time licensed special populations teacher to ensure that students with special needs have the access and support they need to enroll and succeed in technical education programming. If the center employs instructors for Pre-tech programs with this licensure, this position shall be in addition to those employed in Pre-Tech.
7. Each school board operating a technical center shall consult with its regional advisory board on the employment and dismissal of the director and of the adult services coordinator.
8. A technical center shall be eligible for salary assistance for an assistant director if the technical center has a six-semester average of an enrollment of at least 150 FTE students and the sending school population is at least 30 percent of the total enrollment.

2380 Quality Criteria for Technical Education Programs & New Program Approval

1. A technical education program shall meet the following criteria in order to receive state approval:
 - A. The program is based on industry standards that include occupational, workplace, and academic skills,
 - B. The program competencies have been aligned with the Vermont Framework of

- Standards and an embedded academic area has been identified and is of a scope that justifies the granting of an academic credit,
- C. The program competencies have been approved by the State Board,
 - D. The program prepares students for one or more industry recognized credentials upon the completion of the program and/or is articulated with a post-secondary program that offers such a credential,
 - E. The program has one or more articulation agreements with post-secondary education and training programs,
 - F. Rubrics have been identified for assessing levels of competence,
 - G. The school has developed appropriate curriculum and provided the equipment and facilities needed to teach the core competencies of the program,
 - H. The program has a student organization as an integral part of its course of studies,
 - I. The program has an instructor with the required licensure and competencies to instruct in the program's core competencies,
 - J. The program is offered at least the minimum instructional time,
 - K. The program has strategies to achieve gender equity in enrollments and outcomes.
2. When planning to initiate or substantially change a career and technical education program, a school or a technical center shall submit to the commissioner a letter of intent to offer a new or revised program.
3. When the program has been developed or substantially changed, the school shall submit to the commissioner evidence that:
- A. There is current and projected growth in program related jobs within the region's or state's labor market,
 - B. The wages paid for program related jobs exceed the average wages for all jobs in the region/state labor market or that there is a social need for individuals with the skills the program provides,
 - C. The regional board has approved the development of the program and determined that the proposed program does not duplicate existing programs in the region,
 - D. The program will have a program advisory committee that is comprised of people from program-related industry and post-secondary education and that has played an active role in the development of the program,
 - E. The program meets the criteria for technical education programs.
4. If the commissioner has judged that these criteria have been met, s/he shall approve the program and issue it a code for reporting purposes. Enrollments in the program shall not be included for state and federal funding purposes until the program has been approved.

2381 Pre-Tech Programs

1. Pre-Tech Exploratory

For students in the 9th and 10th grades for whom it has been determined by their high school that greater success can be experienced through intensive applied approaches to learning and career exploration and decision-making, technical centers and high schools may offer state-approved pre-tech exploratory programs that shall be eligible for technical education funding. These programs shall be designed to assist students in career exploration, including exploration of career areas non-traditional to their gender, and decision making. Such programs shall also include instruction in an applied setting of the language, mathematics, and science skills students shall need to enter technical education programs and to meet state and local graduation requirements.

2. Pre-Tech Foundational

3. Technical education programs that incorporate a three to four year sequence of courses to provide instruction in a career cluster may be preceded by pre-tech courses in the 9th and 10th grades. These courses shall familiarize students with the possible occupations in a career area and instruct students in the foundational core academic and occupational skills needed by workers in that career area. Such pre-tech foundational programs may be eligible technical education funding if they are recommended for approval by the regional board, meet the criteria for program approval and time requirements, and are approved by the state board of education.

2382 Instructional Time

1. Minimum Instructional Time

- A. The minimum number of instructional days that a school offering technical education programming shall be 175 days each school year.
- B. The minimum time of instruction in a technical education program shall be 600 minutes per week (an average of 120 minutes a day) for a half-day program including Pre-Tech Exploratory programs and 1200 minutes per week for a full-day program.
- C. Pre-Tech Foundational programs shall operate a minimum of 200 minutes per week (an average of 40 minutes per day).

2. Length of Program

- A. Technical education programs shall operate for as many semesters as determined by the state board to be necessary to prepare students to achieve an industry credential and/or pursue career opportunities.
- B. Technical education programs designated as career academies may be approved to operate for up to two full years.

2383 Program Completion

1. Each technical education program shall be based on a competency list approved by the state board. The school shall assess and report student performance on the core competencies of the competency list.
2. Successful Completion:
A student who has been judged competent in 90 percent of the core competencies has completed the program successfully.
3. Academic Credit:
Students who successfully complete a technical education program shall satisfy state graduation requirements as set forth below:

- A. A student who successfully completes one of the technical education programs listed below shall receive one credit in science toward graduation:

Agricultural Mechanics	Auto Body Repair
Automotive Technology	Aviation Technology
Computer Technology Systems	Cosmetology
Culinary Arts	Dairy Production
Dental Assistant	Diesel Truck Mechanic/Operation
Diversified Agriculture	Electrical/Electronics Operations
Electrical/Plumbing Operations	Electronics
Engineering Technology	Environmental and Natural Resources Technology
Equine Science and Technology	Forestry and Natural Resources
Health Careers	Heavy Equipment
Horticulture	Industrial Mechanics
Protective Services	Video Production

- B. A student who successfully completes one of the technical education programs listed below shall receive one credit in mathematics toward graduation:

Bookkeeping, Accounting, Micro-computer Accounting	Building Trades CADD Engineering/Design
Graphic Arts	Hospitality, Travel Tourism and Marketing
Marketing Education	Precision Machining Trades
Millwork/Cabinet Making	Welding and Metal Fabrications
Technical Connections	

- C. A student who successfully completes one of the technical education programs listed below shall receive one credit in art toward graduation:

Design Illustration	Performing Arts
Performing Arts/Music Technology/ Jazz and Contemporary	

- D. A student who successfully completes one of the technical education programs listed below shall receive one credit in English toward graduation:

Medical Records	Office Occupations
-----------------	--------------------

- E. A student who successfully completes one of the technical education programs listed below shall receive one credit in social studies toward graduation.
[This credit may not count as a credit in U.S. History or World History]:

Human Services

Pre-Law

- F. A technical education program may have more than one embedded academic credit if the state board determines that program content justifies it.
- G. The commissioner shall review a technical education program for academic content used to meet state graduation requirements if there is the development of a new technical education program, revision of an existing program, or the combination of existing program components to create a specialized course of study.
- H. After conducting the review, the commissioner shall make recommendations regarding academic credit to the state board. Nothing herein shall preclude a school board from granting additional academic credit for learning acquired in a technical education program.

2384 Program Advisory Committees

1. Each technical education program shall have a program advisory committee of at least five persons representing employers, employees, graduates, and other individuals knowledgeable about the occupations for which students are prepared in the program.
2. The program advisory committees shall meet at least twice a year to review and report to the director on the relevance of program content, levels of student performance, work-based learning opportunities, and strategies for program improvement.

2385 Work-based Learning

1. Types of Work-based Learning

Each technical education program shall include work-based learning to expose students to the realities of the occupation for which they are preparing and the application of academic, workplace and occupational skills they are acquiring in programs.

Work-based learning may include:

- A. Job Shadowing that is the placement of a student in a work station where the student observes the business process. The time span is a total of two to eight hours and it is an unpaid situation where training plans are optional.
- B. Career Work Experience (CWE) which is short term unpaid career exploration

experiences in an occupational field related to a student's program or interest. CWE is a non-paid situation and requires a training agreement but not a training plan.

- C. Co-operative Technical Education (CTE) in which students are placed in paid work experiences at training stations directly related to their technical education program. A training plan and a training agreement are required.
 - D. Student Apprenticeship which is a state-approved program and in which students are placed in a work experience in accordance with the federal Fair Labor Standards Act.
2. Co-operative Work Experience
- A. Technical education students shall be eligible as part of their technical education program to participate in co-operative technical education hereinafter referred to as "co-op."
 - B. All school-approved co-op placements shall meet the following requirements:
 - (1) Each placement shall be planned and supervised by the school and employer so that the experience contributes to the student's education and employability,
 - (2) The minimum age of students placed shall be 16. Student placements shall adhere to Child Labor Bulletin #101 and/or 102 (Child Labor Requirements in Non-Agricultural/Agricultural Occupation Under the Fair Labor Standards Act, 1977),
 - (3) All local, state, and federal laws applying to wage and hour regulations shall be followed,
 - (4) Students shall be covered by Workers' Compensation or comparable individual, school, or employer insurance while on the job,
 - (5) Students shall have on file at the school a properly completed training agreement signed by the student, the student's parent, the co-op coordinator and the employer,
 - (6) Students shall be visited regularly at the work site by the co-op coordinator to assess student progress,
 - (7) Students shall receive an educational program that addresses core technical competencies and tasks directly related to job-seeking and job-keeping skills, and
 - (8) Students shall be eligible to receive credit toward graduation upon successful completion of approved co-op programs when it is part of a state-approved course of study in technical education.
3. Student Apprenticeship
- A. Secondary schools may operate a student apprenticeship program if:
 - (1) the proposed apprenticeship is approved by the regional advisory board,
 - (2) a licensed apprenticeship coordinator is employed to operate the program,
 - (3) a worksite has been identified that offers the opportunity for high skill training and employment and that provides a worksite mentor,

- (4) a student apprenticeship agreement has been signed by the student, the employer, and the school board,
 - (5) the student apprenticeship program follows a state approved curriculum,
 - (6) the school carries appropriate liability and health insurance, and
 - (7) the student apprentice will satisfy all high school graduation requirements set forth by the state and the local school district.
- B. A student may be terminated from the student apprenticeship program if:
 - (1) the student fails to fulfill the requirements of the student apprenticeship agreement as determined jointly by the school and the employer, the student has received at least two written notices from the student apprenticeship coordinator, specifying the nature of the deficiencies, and the student has been provided with reasonable time and necessary support services, including counseling, to address the problem areas, or
 - (2) the student violates company policies as prescribed in the employee handbook and/or commits a serious safety infraction.
- C. Worksite mentors shall be selected by the employer based upon the following criteria:
 - (1) the proposed mentor has sufficient education and work experience in the areas described in the approved student apprenticeship curriculum,
 - (2) the proposed mentor is in a position to carry out the training activities specified in the approved student apprenticeship curriculum, or to designate other employees to engage in this activity,
 - (3) the proposed mentor is aware of the responsibilities accepted by the employer, the school, and the student as described in the student apprenticeship agreement, and
 - (4) the proposed mentor accepts these responsibilities by signing the apprenticeship agreement.
- D. The state board shall provide an industry competency certificate to students completing a student apprenticeship program when the student completes, to the satisfaction of the employer and the school, the approved student apprenticeship program.
- E. The State Board shall maintain a record of certificates, including competency and task attainment, issued to all student apprentices, shall make copies of these documents available to the student and the school, and shall make certified copies available to other parties upon the student's written request.

2386 Career Development

- 1. Schools offering technical education programs shall make good faith efforts to notify all eighth and tenth graders in their region and their parents of the technical education programs that they offer. They shall also provide information on the requirements for admission to the programs.

2. Technical centers shall be a regional resource for career development and provide information and training to middle and high schools in their region on applied academics, work-based learning, career exploration, and career decision making.
3. Technical centers shall align curricula with schools in the region to provide students with opportunities to meet Vermont's standards for student performance and to prepare for career opportunities.

2387 Student Services

1. Technical centers shall provide guidance services that include the development of career preparation plan for every student and assistance with developing and pursuing a post-high school plan.
2. Students identified as being eligible for services under the *Individuals with Disabilities Education Act*, and/or reasonable accommodations under *Section 504 of the Rehabilitation Act*, shall be considered for enrollment in technical education at a (an) IEP/504 Meeting. When an IEP/504 Team determines that the student would benefit from an appropriate placement in technical education, the student may apply for admission to the technical center. Members of the IEP/504 Team shall include the technical education Special Populations Teacher and the instructor of the desired technical education program.
3. Technical centers shall provide accommodations and other services required by special populations students to successfully complete their technical education program. The Special Populations Teacher shall support instructors in carrying out the accommodations, interpret the results of academic and vocational assessments, and design remedial academic exercises. In addition to meetings and record keeping, student services shall also include reinforcing employability skills and supervising services for students whose native language is other than English.
4. Technical centers shall have and implement a plan to encourage and support enrollment of students in technical programs that are in occupational areas non-traditional to their gender.

2388 Credits and Graduation Requirements

1. Grades earned in technical education courses shall not be altered by a public or independent school.
2. School boards shall not establish graduation requirements that have the effect of discouraging or preventing their students from attending technical education programs.

3. Credits earned in a state approved technical education program shall be honored by any public school in Vermont and applied toward any state and local graduation requirements in accordance with policies adopted by the school board of each school district and in accordance with these rules.

2389 Reporting Requirements for Technical Education

1. Technical Education Students

Students whose enrollment will be counted for the funding of technical education are those students who attend a state-approved technical education program or a Pre-tech Exploratory program and who attend at least an average of 80 minutes a day each week. Students' minutes of attendance shall be reported and their FTE shall be calculated on the basis of 1 FTE equaling an average of 240 minutes of enrollment each day. No student shall be counted as enrolled in technical education as more than 1 FTE. Only the student's attendance in the technical education program's course of study shall be reported. Enrollments in other courses shall not be reported.

2. Pre-tech Foundational Students

Students who are enrolled for at least an average of 40 minutes per day each week (at least 200 minutes per week) in a state-approved Pre-tech Foundational program may be reported and counted for technical education funding.

3. Reporting Periods

On October 15 for the first semester and on March 15 for the second semester of each school year, schools that provide state approved technical education programs and pre-tech programs shall record enrollments by program in a format provided by the commissioner. The records shall be submitted to the commissioner by November 15 for the first semester and April 15 for the second semester or the first weekday thereafter if either falls on a weekend.

2390 Establishing the Costs for Technical Education

1. Separate Budget Center

- A. School districts offering technical education programs shall maintain separate cost records for all costs associated with secondary technical education. All revenues and costs shall be accounted for separately from regular secondary school revenues and costs (including Technology Education [Industrial Arts] and Home Economics) and from Adult Education revenues and costs.
- B. The Vermont School Accounting Manual (Handbook II Revised) shall be used to assure that standard sources of funds, instructional organization functions, and object codes are used.

2. Shared Costs

Costs that are shared by technical education programs and other education programs offered by a school district shall be allocated by calculating technical education's percentage of total costs by using the following methods unless the regional board for the center and the school board for the district with whom the costs are shared both agree to an alternate method:

- School board costs, fiscal services, superintendent's office, and other central office costs shall be allocated through the following formula:
$$\frac{\text{direct program costs for technical center}}{\text{total of all direct program costs}}$$
- Staff development/instructional staff support costs shall be allocated through the following formula:
$$\frac{\text{FTE teaching staff for technical center}}{\text{Total FTE teaching staff}}$$
- Building maintenance and operation costs shall be allocated through the following formula:
$$\frac{\text{square feet of technical center}}{\text{total square feet}}$$
- Student support services shall be allocated through the following formula:
$$\frac{\text{Student FTE for technical center}}{\text{Total student FTE}}$$

When an alternate method of sharing costs is adopted, the regional board and school board will notify the commissioner of the method being used in a notification signed by both board chairs that identifies the method and duration of the agreement.

3. Special Education Costs :

The cost of any special education services provided to students with Individual Education Plans (IEPs) may be charged to those students' sending schools by following the special education excess cost procedures set forth in Rule 2366.2. The following procedures apply:

- A. The sending school district or agency responsible shall be given prior notice by the receiving district that an excess cost shall be charged,

- B. Notice shall indicate the student's name, type and frequency of service to be provided, fee for services to be provided, and billing schedule,
- C. Excess costs shall be calculated based on the actual costs attributable to the student or proportionate costs in accordance with the Handbook for Financial Accounting of Vermont School Systems, and
- D. Excess costs shall be billed quarterly and final billings for any fiscal year must be submitted to the sending school district prior to June 15th of that fiscal year.

2391 Calculation of Technical Education Tuition for Technical Centers

1. Technical centers shall separate the costs of secondary technical education programs.
 - A. Income and expenditures for adult education, post-secondary education, and other programs and activities shall be tracked and reported in cost centers separate from secondary programming as required in Rule 2390.1A.
 - B. Income and expenditures for programs and services that are not state-approved technical education programs provided by the technical center to students and schools shall be determined through agreements that are developed between the technical center and the school/s that benefit and that are approved by the regional board. Such agreements shall not result in an increase in the costs of providing technical education programs.
 - C. Sending school districts and receiving school districts may develop agreements that allow students from sending schools to take courses outside their technical education program at the receiving school district in order to facilitate access to technical education. Such agreements shall specify how costs for these enrollments will be covered. If all sending school districts and the receiving school district are in agreement, these costs may be included in the technical education tuition. Otherwise, the sending school districts may be billed for these costs. In no case will enrollments in courses that are not part of the course of studies of a technical education program be reported as enrollment in a technical education program.
2. The technical center shall identify the actual costs of secondary technical education programming that includes all costs associated with that programming.
3. The technical center shall calculate tuition by:
 - A. Subtracting from the actual costs all income through federal funds that support secondary technical education programming; the state grants for overhead, salary assistance and equipment; and local sources of income that was generated by activities funded by the actual costs or use of the facility
 - B. If out-of-state students attend a technical center, the net costs after subtracting the above income are divided into two parts - an amount to be covered through tuition for

out-of-state students and an amount to be covered through funding for Vermont students. This allocation is calculated by adding [the (anticipated) number of full-time equivalent out-of-state students] + [the average of the full-time equivalent Vermont students for the prior three years] and then establishing the percentage of the total for each group. Net costs are divided into two parts based on these percentages.

4. Out-of-state tuition is calculated by dividing the costs to be covered by out-of-state enrollment by the anticipated number of out-of-state full-time equivalent students.
5. The amount to be collected through tuition for Vermont students is identified by taking the net costs for Vermont enrollments and subtracting:
 - an amount that results from multiplying the number of full-time equivalent students times the projected equalized pupil general state support grant, and
 - an amount that results from multiplying the number of full-time equivalent students times the projected state tuition reduction grant.
6. Tuition is calculated by dividing the amount to be collected by the average number of full-time equivalent students over the last six semesters.
7. Vermont sending districts shall be assessed their share of the costs of technical education by multiplying the tuition per student by the number of average full-time equivalent students they enrolled in the technical center over the prior six semesters.
8. Tuition and assessments shall be announced to sending districts by the February 1 prior to the school year in which they will be collected. The announced tuition shall also be reported to the commissioner by February 1.

2392 School District Payments to Technical Centers

1. The general state support grant for the six semester average number of full-time equivalent students enrolled by the school district in a technical center/s shall be deducted from that school district's total state support grant and sent directly to the technical center/s attended by resident students. Those payments shall be made by the commissioner at the same time as general student state support payments are made to school districts.
2. When tuition has been assessed to school districts, school districts shall make tuition payments within twenty days of receipt of their general state support grant. Additional assessments to specific schools districts to reimburse the costs of classes or services not covered by tuition shall be paid on the same schedule.

2393 Tuition Reconciliation

Deficits and Surpluses in excess of 3 percent of net costs (16 V.S.A. § 834)

1. Surplus

If sending districts have paid tuition in excess of 3 percent of net costs for the prior year they shall be credited that amount toward their current year assessment in proportion to their contribution or, if they do not have an assessment sufficient to use the credit, the board of the receiving district shall refund that amount to the sending districts by July 31 of the current fiscal year. Interest shall begin to accrue on the refund on December 1, at the rate of one-half percent per month.

2. Deficit

If the receiving district has under-assessed tuition by 3 percent or more of net costs, the sending districts shall pay the amount of the underassessment. If payment is not made by July 31 of the year following the year of the underassessment, interest shall be owed the sending district at the rate one half percent per month starting the next day, August 1.

2394 Other Tuitions for Technical Education Programs

1. Comprehensive High School Tuition

- A. Comprehensive high schools may not establish a separate tuition for technical education. Technical education costs shall be included in the comprehensive high school standard tuition rate.
- B. School districts sending students to a comprehensive high school shall not have their general state support grant reduced or be assessed based on past full-time equivalent students. They shall pay only the current tuition charged by the comprehensive high school.

2. Tuition for Out-of-State Enrollments

School districts that are geographically remote from Vermont technical centers and that have received permission from the state board of education may send students to technical education programs outside of Vermont. In those cases, the school districts shall receive general state support grants for those students and will pay the full tuition charged by the schools to which the students are sent.

3. Secondary Students in Post-secondary Technical Programs

A secondary technical student may be enrolled in post-secondary technical courses or in a state-approved technical program offered by a post-secondary institution at the expense of the student's school district if the enrollment is accepted by the post-secondary institution, approved by the district of residence as being in the best interests of the student, and if the enrollment is approved for credit toward high school graduation requirements.

2395 State Support for Technical Education

The commissioner shall fund technical education programs in accordance with statutes and these regulations. However, no funds under these rules shall be paid to a school unless its annual plan is approved by the commissioner.

1. Tuition Assistance - Effective July 1, 2002, funds to help cover the costs of technical education programs and services shall be paid to a school offering technical education programs in an amount equal to 40 percent of the per equalized pupil general state support grant for that fiscal year for each full-time equivalent student enrolled in career and technical education programs in the school. Half of these funds shall be paid directly to schools on or before December 10 and April 30.

Prior to July 1, 2002, tuition assistance shall be paid on the full-time equivalent enrollments at a level determined by amount of the state appropriation.

2. Salary Assistance
 - A. The commissioner shall reimburse a school district operating a technical center or a comprehensive high school offering more than five programs for the specific positions set forth in these rules and in accordance with statutory allowances.
 - B. When a technical center or comprehensive high school employs someone in such positions on a part-time basis, assistance shall be prorated to reflect the portion of the position devoted to the reimbursable activities. In order to receive salary assistance for a particular position, it must be staffed at least half-time.
 - C. Salary Assistance shall be awarded as follows:
 - (1) The salary for the director of technical education shall be reimbursed at 50 percent of the state average salary and benefits for the position or 50 percent of the actual salary and benefits, whichever is less
 - (2) The salary of the guidance coordinator shall be reimbursed at 50 percent of the state average salary and benefits for the position or 50 percent of the actual salary and benefits, whichever is less.
 - (3) The salary of the work-based learning coordinator shall be reimbursed at 35 percent of the state average salary and benefits for the position or 35 percent of the actual salary or benefits, whichever is less.
 - (4) The salary of the adult services coordinator shall be reimbursed at a rate not to exceed 50 percent of actual salaries and benefits.
 - (5) The salary of the assistant director, if the region is eligible, shall be reimbursed at 35 percent of the state average salary and benefits for the position or 35 percent of the actual salary or benefits, whichever is less. To be eligible, the technical center must have an six semester average full-time equivalent enrollment of 150 students and 30 percent of these students must be from sending schools.

3. Overhead Assistance

- A. Assistance shall be paid to technical centers to reimburse indirect costs or a portion thereof as appropriated. Overhead assistance shall be based on indirect costs of the school year two years prior to the year of payment. Technical centers shall receive the percentage of the amount appropriated that is the same as the percentage that their indirect costs are to the total indirect costs in the state.
- B. In the case of two or more comprehensive high schools which have been designated a service region, the commissioner shall pay the statewide average overhead cost to the region. This payment shall be made to the comprehensive high schools based on their full-time equivalent student enrollment.
- C. This subsection sunsets on June 30, 2002.

1. Transportation Assistance

- A. Sending schools shall provide transportation to up to two technical centers. The state shall provide transportation assistance to this limit.
- B. Transportation assistance shall be paid from the education fund to sending school districts to provide transportation of students to and from technical centers. Transportation assistance shall not be paid for transportation to or from students' homes or locations other than the sending school.
- C. The amount of transportation assistance shall be \$1.50 per mile for the actual number of miles traveled, in 1998 dollars adjusted annually by the annual price index for state and local government purchases of goods and services. Reimbursement shall be made at this level except:
 - (1) Where a school district reimburses for use of automobiles to transport students, the reimbursement shall be based on the school district reimbursement rate, or
 - (2) Where bus transportation is contracted on a per mile basis and that amount is less than the transportation assistance level, the reimbursement shall be at the contracted rate.
- D. Payments shall be made on or before December 10 and June 10. Requests submitted on or following November 15 and May 15 shall be reimbursed in the next payment period. Requests submitted shall not be made for more than one previous semester.
- E. The sending school district shall report to the commissioner in a format prescribed by the commissioner the miles traveled on a typical day, the number of technical education and other students transported, and the number of days that students are transported for each semester.
- F. When the number of non-technical education students transported in a particular vehicle exceeds 50 percent of the total, reimbursement shall be prorated to reflect the proportion of students who are technical education students.

2396 Equipment: Inventory, Maintenance

1. An inventory of equipment purchased with state and federal funds shall be up-dated and maintained at each school making such purchases. The inventory shall include at least the following: source of funds used, date of purchase, generic name, brand name, model, serial number, quantity, program assignment, and location.
2. Disposal of equipment
When a school is disposing of equipment purchased with state or federal funds, it shall dispose of it in the following order of priority:
 - A. The equipment shall be moved to another state approved technical education program within the school and the inventory updated; or
 - B. The equipment shall be sold to other schools that operate state approved technical education programs and the inventory updated; or
 - C. The equipment shall be offered for sale on the open market and the Department notified before the sale.
4. When equipment purchased with state funds as part of a construction project or with federal funds with a current value of \$5,000 or more and it is sold, a school shall refund to the state or federal government the same percentage of the sale price as the percentage of the purchase price covered by state or federal funds.
5. Adequate maintenance procedures shall be developed and implemented to keep the equipment in good condition.

2397 Use and Maintenance of Technical Education Facilities

1. School boards that operate area technical centers shall annually submit to the commissioner assurances that all facilities designed and constructed for technical education are maintained for the use of providing regional technical education.
2. The receiving school district board may request permission from the commissioner to use technical education facilities for general education purposes if the regional board for technical education has determined that they are not needed for technical education programming and services.
3. A request for use of technical education facilities for general education purposes shall:
 - A. be submitted in writing,
 - B. include a recommendation from the Regional Advisory Board, and
 - C. include a time frame for use of the facilities for general education purposes.
4. At such time as the regional board establishes that space released for general education purposes is again needed for technical education, the regional board shall notify the

commissioner and the school board using the space before the end of the school year preceding the school year in which it is recommended for reuse for technical education. The commissioner shall verify the need and, if warranted, direct the school board to reallocate the space for technical education purposes.

2398 Collaborative Programs

1. Two or more supervisory districts / unions may offer collaborative technical education programs and services in accordance with an agreement entered into pursuant to 16 V.S.A. § 267.
 - A. The agreement shall include a description of services to be provided and the cost for each participating district.
 - B. Participating districts shall seek the advice of their regional advisory board/s prior to entering into an agreement.
 - C. Notice of tuition shall be issued by the administrative district of the collaborative program to the participating school boards as set forth in 16 V.S.A. § 826(a).

2400 VERMONT ADULT EDUCATION RULES

Rules 2390 through 2396 are repealed

The following rules are added:

2400 Adult Education

2401 Statement of Purpose

These rules establish a state Adult Education Board to define policies and oversee the development and operations of Department of Education adult education programs in Vermont. These rules further clarify policies with respect to the Adult Basic Education Program, Adult Diploma Program, Vermont Literacy Resource Center, Adult Technical Education, Even Start, and General Educational Development Program.

The purpose of Adult Education programs is to offer adults the opportunity to acquire the level of education and technical training skills necessary for active participation as family members, citizens and learners, and for economic self-sufficiency. Adult Education programs seek to expand educational opportunities and enable eligible adults to continue their education to at least the level of secondary school completion.

2402 Statutory Authority

16 VSA §164, (7) and (13); 16 VSA §1049
Adult Education Act, P.L. 91-230 as amended from time to time (20 U.S.C. §1232 (a));
45 C.F.R. Parts 166, 166a, 166b and 166c
Adult Technical Education, 16 VSA §1553
Even Start Family Literacy Program, 20 U.S.C. §2741
State Literacy Resource Centers, 20 U.S.C. §§1205a and 1208aa

2403 Definitions

Adult Education, as used in these rules, means the process for the acquisition of skills and knowledge equivalent to that of secondary education provided in a manner responsive to the unique needs of individual learners, families and their communities.

2404 Adult Education Board

There is hereby created a state adult education board which shall be known as the “Vermont Adult Education Board” (hereinafter “Board”). The Board shall be appointed by the Vermont State Board of Education and shall comprise at least nine and not more than fifteen members who represent a broad spectrum of occupations, perspectives, interests and

geographic locations within the state and who possess a strong commitment to adult literacy but who have no pecuniary or other interest which conflicts with or creates an appearance of conflict with board responsibilities. Vermont Literacy Board members in office on the effective date of these rules shall complete their terms. Thereafter each vacancy shall be filled for a term of three years. Terms of office shall begin on July 1. Members may be re-appointed.

Annually the Board shall elect one member to serve as chair and one member to serve as vice-chair.

Committees and subcommittees may be appointed by the chair and such committees and subcommittees may include non-Board members.

The Board shall develop an annual policy agenda in consultation with the Commissioner, State Board of Education, parties interested in adult education and the public. The policy agenda shall identify new issues for study and action as well as ongoing work to be completed by the Board.

2405 Duties of the Vermont Adult Education Board

- 2405.1 The Board under the direction of the Vermont State Board of Education shall exercise policy authority over and define the mission and plan of action for the following Department of Education Programs: Adult Basic Education, Adult Technical Education, Adult Diploma Program, General Educational Development Program, Even Start Program, and Vermont Literacy Resource Center.
- 2405.2 The Board shall report quarterly to the Vermont State Board of Education and more frequently, as requested, to the Commissioner of Education.
- 2405.3 The Board shall propose to the State Board of Education and Commissioner methods to unify the Department of Education's adult programming into an adult education system related to public policy goals.
- 2405.4 The Board shall provide leadership and advocacy for adult education with policy makers, funders, providers, and the general public.

With respect to Adult Education Programs:

- 2405.5 For those programs identified in 2405.1 that require a state plan, the Board shall conduct the necessary planning process.

- 2405.6 The Board shall oversee the development, refinement and conduct of the regional adult education “Request for Proposals” process, with the approval of the State Board of Education, for the distribution of state and federal funds. In so doing, the Board shall promote regional collaboration and ensure equitable access to services throughout Vermont.
- 2405.7 The Board shall monitor progress of funded programs for fiscal and programmatic accountability and report thereon to the State Board of Education.

2410 Adult Basic Education Funding Formula

The funding formula for allocating Adult Basic Education funds shall be calculated on a county basis and shall be as follows:

2410.1 each county shall receive a base allocation of \$30,000.00.

2410.2 70% of the remaining funds available for allocation shall be allocated on the basis of comparative need as measured statewide as follows:

15% based upon the statewide percentage in the county of unemployed or underemployed persons without a high school diploma.

50% based upon the statewide percentage in the county of persons who are 16 years of age or older, not enrolled in school and without a high school diploma.

20% based upon the statewide percentage in the county of persons living at 125% of poverty.

15% based upon the statewide percentage in the county of persons in the categories of offenders, mothers without high school diplomas and persons for whom English is a second language.

2410.3 30% of the remaining funds available for allocation shall be allocated on the basis of the comparative density of need within each county as follows:

15% based upon each county’s density of unemployed and underemployed persons without a high school diploma.

50% based upon each county’s density of persons 16 years of age or older, not enrolled in school and without a high school diploma.

20% based upon each county's density of persons living at 125% of poverty.

15% based upon each county's density of persons in the categories of offenders, mothers without high school diplomas and persons for whom English is a second language.

2411 Transition Provision

Notwithstanding the provisions of Rule 2410, no county shall receive less funding than that awarded in FY 1994, unless the total amount available for allocation has been reduced from the FY 1994 basic grant award total. In such cases, the reduction shall be pro-rated proportionately to all counties.

All monies available for the ABE basic grant award that exceed the FY 1994 basic grant award shall be applied to continue the implementation of Rule 2410 until such time as Rule 2410 is fully implemented. During this transition period, a county that under the formula would receive less than the amount it received in FY 1994 would receive the amount it received in FY 1994.

9/1/2004

2500 SCHOOL ACCOUNTABILITY SYSTEM BASED ON STUDENT ACHIEVEMENT**2505 Statutory Authority**

16 V.S.A. § §164 (9) & (17) and 165 (b), as amended by Sec. 2, Act 64 of 2003; Sec. 96 of Act 71 of 1998 and Title I of the No Child Left Behind Act (NCLBA) of 2001, 20 U.S.C. § 6311 et seq.

2510 Statement of Purpose

The purposes of these rules are to: (1) establish a process for identifying public schools and Local Educational Agencies (LEA) in need of improving student performance – and those with outstanding performance – in relation to the content standards set forth in *Vermont's Framework of Standards and Learning Opportunities* and the *Grade Level Expectations for Mathematics and English Language Arts* associated therewith, and (2) provide for technical assistance to schools and LEAs that are not making sufficient progress and, as necessary, require further actions to ensure that students in those schools and LEAs have opportunities to meet such standards.

2515 Statement of Policy and System Overview

The accountability system set forth in these rules is designed to fulfill the student performance accountability requirements of 16 V.S.A §165.

The rules provide for a method for aggregating state assessment results into two achievement indexes, in mathematics and in English Language Arts (ELA), from a number of student performance measures over time. These indexes are developed through the assignment of points to the achievement levels of all students who take assessments in a school or LEA.

The Commissioner of Education shall annually determine whether schools and LEAs make Adequate Yearly Progress (AYP).

The Commissioner will ensure the provision of technical assistance to schools and LEAs that make insufficient progress. Appeals processes are established for accountability calculations and for consequences. A State Board review of the Commissioner's recommendations for consequences for schools and LEAs that have not made AYP for four consecutive years is also established.

2520 Definitions

The following definitions apply and may be further described in the Operations Manual.

“Academic Indicators” are student performance measures closely associated with academic achievement. Graduation Rate shall be used as the Academic Indicator for any school or LEA containing grades 9-12.

“Adequate Yearly Progress (AYP)”: A school or LEA makes AYP when it meets the applicable criteria in the following elements:

- ELA Achievement Index
- Mathematics Achievement Index
- Participation Rate
- Academic Indicator

“All Student Group” means all students enrolled in the school in the assessed grades for the full academic year.

“Alternate Assessment” means an assessment for students for whom the regular assessment or the regular assessment with accommodations is not appropriate, as determined by the IEP team.

“Annual Measurable Objective (AMO)” means the annual target on the achievement indexes.

“Assessment” means the process of measuring student achievement.

“Confidence Interval” means the statistical method used to ensure the reliability of one or more elements of the AYP decision.

“English Language Arts (ELA) Achievement Index” means the index containing combined ELA state assessment results for a school or LEA.

“Full Academic Year”: When state assessments are given in the spring, the full academic year is defined as beginning on the first Tuesday in September of that year. When state assessment are given in the fall, the full academic year is defined as beginning on the first Tuesday in September of the previous year.

“Local Education Agency (LEA)” means the school district which operates a school at elementary, middle and/or high school level, unless otherwise determined by legislation.

“Mathematics Achievement Index” means the index containing combined math state assessment results for a school or LEA.

“One Year of Exceptional Growth” means the method by which AYP is met when two years of assessment results meet the AMO without the use of a confidence interval.

“Participation Rate” means the percentage of students in a school or LEA who take state assessments; it is calculated by dividing the number of students who participate in all regular or alternate state assessments included in the accountability system by the number of students enrolled in a school or LEA on the day before the first day of the official test period.

“Safe Harbor” is a determination of whether a school or LEA has met AYP because of significant improvement in student achievement, even if this achievement has not been sufficient to meet the AMO.

“Title I” means Title I of NCLBA.

2525 Operations Manual for the Accountability System Based on Student Achievement

The Commissioner shall prepare an Operations Manual. It shall be approved by the State Board – and may be revised from time to time – through a public process pursuant to written procedures developed in advance by the Commissioner. The process shall include, at minimum:

- Notice on the Department’s Web site and in newspapers of general circulation in all areas of the state, and provision of copies to anyone who requests
- Sending the proposed Manual and any proposed revisions to educational organizations, the Legislative Committee on Administrative Rules and the No Child Left Behind Oversight Committee
- A reasonable period for written public comment
- One or more public hearings, and
- Consideration and approval of the Manual and any proposed revisions at a duly warned regular State Board meeting

The Operations Manual shall contain practices to be used by the Department in the discharge of its powers and duties under these rules and under its statutory authority that do not alter or affect substantive legal rights. It shall include, but not be limited to, the following:

- Criteria or formulae for the calculation of achievement indexes, statistically significant size of student groups for accountability determinations, selection of and criteria for meeting academic indicators, application of the participation rate, calculation of “one-year exceptional growth” and “safe harbor”, the process and criteria for Small School Reviews and the calculation of AYP for schools with anomalous grade configurations
- Criteria for permitting exemptions from assessment
- Criteria and process for public recognition for outstanding performance by schools and LEAs
- Table of Annual Measurable Objectives
- Explanation of the use of confidence intervals in AYP decisions.

2528 Technical Advisory Panel (TAP)

The Commissioner shall appoint individuals experienced in the field of educational assessment to the Technical Advisory Panel (TAP). Its members shall advise the Commissioner on technical issues related to state and local assessments, thereby ensuring that Vermont’s Comprehensive Assessment System and the Accountability System Based on Student Performance are technically and educationally sound.

2530 Committee of Practitioners (CP)

The Commissioner shall appoint representatives of local educational agencies, educators, principals, pupil services personnel, administrators and parents to the Committee of

Practitioners. The CP fulfills the federal requirement for consultation and shall advise the Commissioner on issues related to the effects of the assessment and accountability systems on schools' instructional programs, with a particular focus on equal opportunities to learn as well as other requirements for consultation under federal law.

2535 Validity of State Assessment Results and Other AYP Determination Data

The Commissioner, after consulting with TAP, CP, and the State Board, shall annually determine the validity of state assessment results and other data (e.g., graduation rate, academic indicators, and participation rate) prior to their use in making AYP determinations.

2540 Accountability for All Students and Annual Determinations

Schools and LEAs shall ensure that all students are appropriately included in calculating the participation rate. The results of all students enrolled in the school or LEA for the full academic year shall be included in the Mathematics and ELA Achievement Indexes. There shall be an annual determination of AYP for all schools and LEAs.

2545 Accountability Determinations for AYP Groups

A determination of AYP shall be made for the All Student Group in each school and LEA. AYP decisions shall also be made for each of the following groups of students, when they have statistically reliable numbers of students present in the school or LEA:

- Economically Disadvantaged Students
- Students with Disabilities
- Limited English Proficient Students
- African-American Students
- American Indian/Alaskan Native Students
- Asian Students
- Hispanic or Latino Students
- Native Hawaiian /Pacific Islander Students
- White Students

Or as otherwise may be required by federal law.

2550 Small School Review

The Commissioner shall conduct a review of additional student achievement results in small schools. The Operations Manual shall describe schools' eligibility for the reviews, the review process and how AYP determinations are made.

2555 Accountability Reports

The Commissioner shall provide accountability reports on all elements of the AYP determination and the accountability status to each school and LEA.

The Commissioner shall annually issue a public report of accountability results. The report shall include the accountability results of every public school and LEA for the applicable elements of the AYP decision.

To ensure the confidentiality of individual students' results, public reporting of any assessment or accountability result shall require a minimum of 11 students. In no case shall results be reported when personally identifiable information would be revealed or if released information could lead to identification. All public reporting shall comply with the Family and Education Rights and Privacy Act, 20 U.S.C. §1232g, 34 CFR §99.1 et seq.

The AYP report shall include the AYP determination for all groups in each school and LEA on: the Mathematics Achievement Index, the ELA Achievement Index, the Academic Indicator applicable to the grade span of the school or LEA and the Participation Rate. In addition, the identification status, including the number of years identified for improvement and the level of consequences, of each school and LEA, shall also be reported.

2560 Identification of Schools and LEAs Not Making AYP for Two Consecutive Years

Except as may be necessary to conduct Small School Reviews, a school or LEA shall be identified for school improvement if the All Student Group or any other group of statistically reliable size does not make AYP for two consecutive years in the same Achievement Index or in the Participation Rate. For the All Student Group, the school or LEA shall also be identified if the Academic Indicator criterion is not met for two consecutive years. All other AYP groups of statistically reliable size must also meet the Academic Indicator if AYP is met through “safe harbor” calculation or the one-year exceptional growth calculation.

2565 Required Actions for Identified Schools and LEAs

The Commissioner shall send written notification of the actions that the school or LEA is required to institute to address those areas that caused the identification.

2568 Appeal of Identification and/or Required Actions

To appeal the Commissioner’s determination that a school or LEA has not met AYP or has been identified for improvement or other consequences, the school board chair shall submit a written request to the State Board within 45 calendar days of receiving notification thereof. Proceedings before the Board shall be governed by State Board Rule 1230. A school board aggrieved by an order of the State Board may appeal in accord with the Vermont Rules of Civil Procedure.

2570 Exiting Identification after Two Consecutive Years of Making AYP

Any school or LEA that meets AYP for two consecutive years, in the element(s) on which they were identified, shall exit formal identification status.

2575 Commissioner’s Recommendations to the State Board for Schools or LEAs Not Making AYP for the Fourth Consecutive Time

If the school or LEA does not make AYP for the fourth consecutive year in the relevant elements, the Commissioner shall recommend to the State Board actions consistent with state and federal law.

2575.1 State Board Action on Commissioner's Recommendations and Appeal of State Board Decision

After the opportunity for hearing, the State Board shall order that one or more of the actions consistent with state and federal law be taken. The action ordered by the State Board shall be the least intrusive, consistent with the need to provide students attending the school or in the LEA with substantially equal educational opportunities.

A school board aggrieved by an order of the State Board may appeal in accord with the Vermont Rules of Civil Procedure.

2580 School and LEA Public Recognition

Any school or LEA that either closes the achievement gap between AYP groups for two or more consecutive years in a statistically significant way or exceeds their adequate yearly progress for two or more years shall receive public recognition by the State Board.

The criteria and process for such recognition shall be included in the Operations Manual.

2585 Effective Date

These rules shall be effective on September 1, 2004.

2600 PREKINDERGARTEN EDUCATION

Effective: July 5, 2008

Selected Definitional Sections and Statutory Authority

See 16 V.S.A. § 11(a)(31) for the definition of “prekindergarten education.” See also 16 V.S.A. § 11(a)(6) for the definition of “kindergarten,” 16 V.S.A. § 1073(a) for the definition of “legal pupil,” and 16 V.S.A. § 1121 regarding mandatory attendance by school-age children.

2601 Statement of Purpose and Applicability

The purpose of prekindergarten education is to provide young children with opportunities to reach their full growth and developmental potential. These rules establish standards for prekindergarten education which may be offered by local school districts in accordance with 16 V.S.A. § 829. Nothing herein shall be construed as mandating the establishment, continuation or expansion of prekindergarten education by a school district, or as creating an entitlement to prekindergarten education.

2602 Definitions

The following definitions shall apply to terminology which is used throughout these rules:

- (1) **Average Daily Membership (ADM).** Average daily membership is defined in accordance with 16 V.S.A. § 4001(1);
- (2) **Developmentally Appropriate.** Developmentally appropriate describes practices which are based upon principles of how children develop and learn, as articulated by the National Association for the Education of Young Children (NAEYC); these practices are responsive to each child’s individual strengths, interests and needs, and are aligned with Vermont’s early learning standards;
- (3) **Effective and Efficient.** A prekindergarten education program that operates effectively and efficiently is one that meets the needs of children and families, produces measured and evidenced outcomes for children in accordance with the Vermont Early Learning Standards, minimizes transitions for children, and does not exceed what it would cost the school district to operate a comparable program;
- (4) **Essential Early Education.** Essential early education (EEE) means special education services and supports which are provided pursuant to Part B of the Individuals with Disabilities Education Act, and in accordance with 16 V.S.A., Chapter 101;
- (5) **Full-time Equivalent for Prekindergarten.** A full-time equivalent for prekindergarten is defined as ten hours of prekindergarten education per week. If a child is enrolled in prekindergarten education for between six and ten hours per week, the child is counted as a percentage of one full-time equivalent. A child who is enrolled in prekindergarten education for fewer than six hours per week shall not be included in the district’s ADM unless the child is in EEE;
- (6) **National Accreditation.** National accreditation means accreditation by the National Association for the Education of Young Children;

(7) **Parental Participation.** Parental participation in a prekindergarten education program means the opportunity for parents and guardians to be actively involved in the program, and may include involvement in program development, policy work, program evaluation, curriculum development, and helping in the class;

(8) **Prekindergarten Child.** Prekindergarten child means:

(a) A three or four year old child who is enrolled in a prekindergarten education program;

(b) A child who is receiving essential early education pursuant to 16 V.S.A. § 2965; or

(c) A five year old child who is enrolled in a prekindergarten education program, and who is not yet eligible for, or who is not enrolled in, kindergarten;

(9) **Prekindergarten Education.** Prekindergarten education means services designed to provide developmentally appropriate early development and learning experiences that are based on Vermont's early learning standards to children who are three and four years of age, and to five year old children who are not eligible for, or enrolled in, kindergarten;

(10) **Program Expansion.** Program expansion is when a school district seeks to increase the number of children included in its ADM count and such an increase would require additional contracts, personnel, and/or classrooms;

(11) **Qualified Prekindergarten Education Program.** A qualified prekindergarten education program means a program or provider of prekindergarten education which satisfies the educator licensing and program quality standards specified in Sections 2606 and 2607 of these rules;

(12) **School District.** School district is defined in accordance with 16 V.S.A. § (11)(a)(10);

(13) **Step Ahead Recognition System (STARS).** The Step Ahead Recognition System is the department for children and families' graduated quality rating system for early childhood programs, based upon that department's program quality standards;

(14) **Vermont Early Learning Standards (VELS).** The Vermont early learning standards are state-recognized performance standards and learning outcomes for three and four year old children.

2603 Establishing or Expanding Prekindergarten Education

(1) Prior to a school district's establishment or expansion of prekindergarten education, the school district shall engage the community in a collaborative process in order to assess:

(a) The need for, and the level of support for, prekindergarten education within the community;

(b) The estimated number of three and four year old children in the community, and the types and locations of early care and education programs that currently serve these children; and

(c) An inventory of all existing local early care and education providers which meet, or have the potential to meet, the quality standards set forth in Sections 2606 and 2607 of these rules;

(2) The collaborative assessment process shall include parents, existing early child care and education providers, representatives of the regional early childhood council, and other community members;

(3) The commissioner of education and the commissioner of the department for children and families shall jointly develop and publish advisory guidelines which school districts and communities can use to conduct needs assessments and inventories of existing service providers;

(4) Results of the school district's needs assessment and inventory of all existing service providers shall be used in the development of any proposal to establish or expand prekindergarten education. The proposal shall indicate whether prekindergarten education will be provided through contracting with existing qualified private providers, through operating a public school prekindergarten program, or both;

(5) If a school district begins or expands prekindergarten education, the district shall use existing qualified private providers to the extent that existing qualified private providers have the interest to participate and have the capacity to meet the district's needs effectively and efficiently;

(6) A school district, after conducting the required collaborative community process, may limit the number or ages of children who are to be enrolled in the prekindergarten education program, in order not to exceed the number of children who may be included in its average daily membership as limited by the provisions of 16 V.S.A. § 4001(1)(C)(ii);

(7) A school district may choose to go beyond the cap established in 16 V.S.A. § 4001(1)(C)(ii), and in so doing, may offer prekindergarten education to children who will not be eligible to be included in its average daily membership;

(8) When a school board includes in its approved budget funds to provide prekindergarten education, and when the number of resident prekindergarten children who apply for prekindergarten education exceeds either the capacity and/or the number of prekindergarten children who may be included in the district's ADM, the school board shall design and implement a nondiscriminatory method of determining who will be enrolled and/or who will be included in the district's ADM. A school district that offers prekindergarten education by contracting with private providers shall consult with those private providers in developing the nondiscriminatory method. Districts which use federal and/or state funds or grants to support prekindergarten education, and those funds target specific populations, may prioritize serving those children in order to fulfill their grant obligations;

(9) A prekindergarten child who is included in the district's ADM as a three-year-old shall automatically be eligible to be included in the district's ADM as a four-year-old, as long as the child remains a resident of the district; and

(10) The school district shall publicize the availability of prekindergarten education programs in a manner which is designed to adequately inform parents of their nature and availability.

2604 Contracting with Existing Qualified Prekindergarten Programs

(1) School districts that provide prekindergarten education by entering into contracts with existing qualified providers shall enter into written contracts which, at a minimum, shall include the following provisions:

(a) That the qualified provider shall:

(1) Maintain its status as a qualified prekindergarten education program in accordance with Sections 2606 and 2607 of these rules, and report any change in this status, including alleged or proven violations of program licensure or registration requirements, to the school district, within five days of such accusation or finding;

(2) Adhere to federal and state laws on non-discrimination which apply to private providers;

(3) Provide a developmentally appropriate curriculum which is aligned with Vermont's early learning standards;

(4) Provide prekindergarten education for a minimum of 35 weeks per academic year;

(5) Conduct child development assessments of each child enrolled for at least four hours per week, using one or more instruments approved by the department of education and the department for children and families, at least two times per year, and report the results to the school district by June 30;

(6) Provide parents with a report of their children's developmental progress at least two times per year, and offer parents at least two opportunities per year to meet with the teacher;

(7) Describe and provide opportunities for parental participation;

(8) Permit on-site visits, announced or unannounced, by school district staff and by representatives of the department of education and the department for children and families;

(9) Participate in training which may be required for the purpose of fulfilling the provider's contractual obligations;

(10) Maintain appropriate liability insurance coverage;

(11) Complete reports for enrollment, attendance, child assessment, actual costs of prekindergarten education, finances and other areas, as required by state law, the department of education, and the school district; and

(12) With respect to essential early education students who are enrolled in the prekindergarten education program, comply with all requirements of state and federal laws governing essential early education;

(b) Establish payment provisions according to the following:

(1) Use the template provided by the department of education and the department for children and families to establish the actual costs of operating the prekindergarten education program;

(2) The actual cost shall serve as the basis for contract negotiations between the district and any qualified private provider which proposes to provide prekindergarten education on behalf of the district;

(3) The school district will pay the negotiated cost of providing the agreed upon services for up to 10 hours per week; part of the negotiated cost may include the school district's provision of a licensed teacher, and

(4) Providers may not charge parents for services paid for by the school district. Providers may charge parents up to the difference between the actual cost of the contracted services and the amount paid for those services by the district. No district shall count any child in its ADM unless it is directly providing, or contractually paying to provide, at least six hours of prekindergarten services for that child unless the child receives EEE services.

(2) A parent or guardian residing in a school district which provides prekindergarten education may request in writing that the school district enter into a contract with a qualified prekindergarten education program within or outside of the district. The school district shall consider the request, and shall submit its determination and rationale, in writing, to the parent or guardian, within 30 days of receiving the request;

(3) A private provider that meets the program quality standards and requisite staff qualifications which are specified in Sections 2606 and 2607 of these rules, may submit a written request to a school district that provides prekindergarten education for the purpose of entering into a contract to provide a prekindergarten education program, if the provider is located within the school district. The school district shall consider any such request, and shall submit its determination and rationale, in writing, to the provider, within 30 days of receiving the request. If denied, a provider may re-apply for the next academic year; and

(4) A private provider that meets the program quality standards and requisite staff qualifications set forth in Sections 2606 and 2607, and which is located outside of a school district that provides prekindergarten education, may submit a written request to such a school district that it be permitted to enter into a contract to provide a prekindergarten education program for one or more of the district's resident children. Such provider shall include in its written request evidence that prekindergarten children who reside in such school district currently attend, or wish to attend, the provider's program. The school district shall consider any such request and shall submit its determination and rationale, in writing, to the provider, within 30 days of receiving the request. If denied, a provider may re-apply for the next academic year.

2605 Districts Operating Prekindergarten Education Programs

(1) Subject to the requirements of Rules 2603(5) and 2608(3), a school district may also provide prekindergarten education by establishing and operating a program either within a public school, or through a facility which is not physically part of a public school. All such district-operated prekindergarten education programs, regardless of where they are physically located, shall be licensed through the department for children and families, and shall be in good regulatory standing; and

(2) Any district-operated prekindergarten education program shall:

- (a) Maintain its status as a qualified prekindergarten program in accordance with Sections 2606 and 2607 of these rules, and shall report any change in this status, including alleged or proven violations of program licensure or other requirements, to the department of education, within five days of such change;
- (b) Adhere to federal and state laws regarding non-discrimination;
- (c) Provide a developmentally appropriate curriculum which is aligned with Vermont's early learning standards;
- (d) Provide prekindergarten education for a minimum of thirty-five (35) weeks per academic year;
- (e) Conduct child development assessments of each child enrolled for at least four hours per week, using one or more instruments approved by the department of education, at least two times a year, and report the results of those assessments to the department of education by **July 30**;
- (f) Provide parents with a report of their children's developmental progress at least twice per year, and offer parents at least two opportunities per year to meet with the teacher;
- (g) Describe and provide opportunities for parental participation;
- (h) Permit on-site visits, announced and unannounced, by representatives from the department of education and the department for children and families;
- (i) Complete reports for enrollment, attendance, child assessment, costs of prekindergarten education, finances and other areas as required by state law and the department of education; and
- (j) Comply with all requirements of any applicable state and federal laws governing essential early education.

2606 Qualified Prekindergarten Education Programs

(1) Only children enrolled in qualified prekindergarten education programs shall be included in a school district's ADM count. A prekindergarten education program shall be considered qualified only if it meets all of the following criteria:

(a) The program receives and maintains at least one of the following quality program recognition standards:

(1) National accreditation through the National Association for the Education of Young Children (NAEYC);

(2) A minimum of four stars in Vermont's Step Ahead Recognition System (STARS), with at least two points in each of the five arenas; or

(3) Three stars in the STARS system if the program has a plan approved by the commissioner for children and families and the commissioner of education to achieve four or more stars within three years, including at least two points in each of the five arenas, and if the program has met intermediate steps;

- (b) The program is currently licensed or registered, as applicable, by the department for children and families, and is in good regulatory standing;
- (c) The program's curricula are aligned with the Vermont early learning standards;
- (d) The program provides opportunities for parental involvement and participation. These opportunities may include involvement in program development, policy work, program evaluation, curriculum development, and helping in the class; and
- (e) Program staff meet the professional standards described in Section 2607 of these rules.

2607 Staff Qualifications

In addition to meeting all the applicable early childhood program licensing regulations of the department for children and families, qualified prekindergarten education programs shall meet the following staff qualifications:

- (1) Teachers in district-operated prekindergarten education programs shall be licensed with an endorsement in either early childhood education or early childhood special education;
- (2) Each contracted licensed center shall employ, or contract for the services of, at least one teacher who is licensed and endorsed in either early childhood education or early childhood special education;
- (3) The operator of each registered home shall either be a teacher who is licensed and endorsed in early childhood education or early childhood special education, or shall employ or contract for the services of at least one teacher who is licensed and endorsed in either early childhood education or early childhood special education, or in the alternative, shall receive regular, hands-on active training and supervision from a teacher who is licensed and endorsed in either early childhood education or early childhood special education. Under this last arrangement, the regular, active training and supervision shall occur at least three hours per week, and during each of the 35 weeks per year in which ADM-counted children are enrolled. The registered home shall maintain appropriate written documentation of the supervision on location; and
- (4) Nothing in these rules shall be construed as restricting the ability of a district or a private provider from filling a staff position with an individual who holds a provisional or emergency license. Under such circumstances, however, the district, the private provider, and the holder of the provisional or emergency license, shall meet all of the terms and conditions of VSBPE Rules 5350-5364 and their successor rules. When a private provider is unable to employ a licensed educator for the purpose of becoming a qualified private provider, a superintendent may, on behalf of the requesting private provider, and pursuant to the terms and conditions of VSBPE Rules 5350-5364 and their successor rules, apply to the department of education for a provisional or emergency license for one or more individual(s) whom the qualified private provider wishes to have provide prekindergarten program services under these rules. Under such circumstances, the superintendent shall monitor the progress and completion of the required two year plan for obtaining a Level I license. The mere act of a superintendent applying, on behalf of a qualified

private provider, for a provisional or emergency license, shall not obligate the district to contract with that (or any other) qualified private provider.

2608 Reporting the Costs of Prekindergarten Education

(1) To ensure transparency and accountability for prekindergarten education costs, school districts shall submit financial reports on forms provided by the commissioner of education, detailing their costs for prekindergarten education on an annual basis, and in accordance with the following provisions:

(a) Providers under contract with a school district shall report to the contracting district all allowable prekindergarten education costs as specified in their contracts, on forms provided by the commissioner of education; and

(b) School districts shall compile the financial reports from all of their contracted prekindergarten education programs, and shall report those costs to the commissioner of education on or before August 1 of every year;

(2) School districts shall report their expenditures for both contracted and district-operated prekindergarten education programs and for essential early education, by source of funds (e.g., education fund, state grant, federal funds), to the commissioner of education, on or before August 1 of every year; and

(3) School districts shall specify the identifiable costs for prekindergarten education and essential early education services in their annual budgets, and in their annual reports to the community.

2609 Reporting on the Effects of Prekindergarten Education

(1) Each school district shall provide annual data on the progress of all of its children who are both: (a) attending a prekindergarten education program for four or more hours; and (b) included in its average daily membership, to the commissioner of education;

(2) The school district shall, after consultation with its own and contracted prekindergarten education providers, select one or more assessment instruments from the state-approved list in order to measure its prekindergarten children's level of development during the beginning of the year and again during the last weeks of the program on an annual basis; and

(3) Each school district shall compile and report the results of the assessments which are to be conducted hereunder, and shall do so in accordance with the guidance which shall be provided by the commissioner of education and the commissioner for children and families.

2610 Grounds for Administrative Appeal Regarding a School District's Prekindergarten Education Program

The following actions of a school district may be made the subject of an administrative appeal:

(1) A parent or guardian of a prekindergarten child, or an existing provider, may appeal a district's determination regarding whether an existing provider meets the standards set forth in Rule 2606 or Rule 2607;

- (2) A parent or guardian of a three or four year old child, or of a five year old child not yet eligible for or enrolled in kindergarten or, a potential qualified provider, may appeal a district's proposed plan to establish or expand prekindergarten education, on the grounds that the plan was formulated in violation of these rules;
- (3) A parent or guardian of a prekindergarten child, or a qualified provider, may appeal a district's rejection of a request pursuant to Rule 2604(2), (3) or (4) or its compliance with the requirements of Rule 2603, on the grounds that the district did not conform to the procedural requirements of an applicable statute or rule;
- (4) Appeals shall be filed in writing by the appellant with both commissioners, within 30 calendar days of the alleged violation which gives rise to the appeal. Written appeals must contain a description of the facts upon which the appellant relies and an explanation of why the appellant believes that the district's actions violated the requirements of the statute or rule. The appellant shall also provide copies of the written appeal to all parties within the time limits allowed by these rules;
- (5) For purposes of appeals under this rule, party status shall be limited to the appellant(s) and the school district. The school district shall have 30 calendar days from receipt of the appellant's submission to respond in writing to the submission, and shall provide copies of its response to all parties;
- (6) Appeals shall be considered jointly by the commissioners of education and children and families or their counsels. The commissioners may request additional written submissions from one or both of the parties, and under such circumstances, copies of both the request(s) and the response(s) shall be sent to all parties by the commissioners. The commissioners, in their discretion, may hold a hearing, either at the request of one or more of the parties, or on their own initiative;
- (7) The burden of proof shall be on the appellant. The standard of review shall be by a preponderance of the evidence; and
- (8) The commissioners shall jointly issue a written decision within 30 calendar days of the close of the record, and the commissioners' decision shall be final.

2611 Effective Date

These rules shall become effective on July 1, 2008. School districts that have been providing prekindergarten education either through contracts with private providers and/or district-operated programs and including prekindergarten children in their ADM count prior to the effective date of these rules, shall have until July 1, 2009 to comply with sections 2604 (1)(b), 2606(1)(a), and 2609 of the rules.

2612 Repeal 9200.4

Repeal State Board of Education rule 9200.4 on calculating the Full-time Equivalent of Essential Early Education/Prekindergarten Pupils.

3000 SCHOOL DISTRICT ORGANIZATION

2/9/06

3100 Statement of Purpose

The State Board of Education firmly believes that the school districts of Vermont should be organized so as to provide the maximum educational opportunities for pupils in grades K-12 or 1-12 consistent with administrative and financial effectiveness and efficiency.

3200 Supervisory Unions

3210 Statutory Authority: 16 VSA §261, 16 VSA §262, 16, VSA §§263-266, 16 VSA §267, 16 VSA §§301-303, 16 VSA §§321-325

3220 Supervisory Union Adjustments

3221 Procedure

3221.1 Adjustments may be requested by a member district(s), or initiated by the State Board of Education.

3221.2 A school district may petition following a vote, complying with 16 VSA §261(b), in favor of adjustment.

3221.3 Following a request to adjust, the petitioning district shall conduct a needs assessment which should indicate what educational services are presently provided and what educational services would be provided under the proposed adjustment.

3221.4 The needs assessment will be conducted by the state Department of Education if the State Board of Education initiates the request.

The Department of Education shall obtain a response from affected school districts.

3221.5 The State Board of Education will consider action on a request following receipt of the above information.

3221.6 In no case will adjustments occur within supervisory unions until July 1 following the annual supervisory union meeting following State Board of Education action.

3222 Agreement

School districts involved in a supervisory union adjustment must agree to the following:

3222.1 To maintain a K-12 or 1-12 educational continuum to the extent practicable.

3222.2 That all existing programs or equivalent services currently provided through local financial effort shall continue to be provided in all districts affected for a minimum of three (3) years from the effective date of the adjustment.

3222.3 The Department of Education shall report to the State Board of Education as to district agreement on and compliance with the conditions. Failure to comply could result in a reversion to the original organizational pattern.

3223 Needs Assessment

Supervisory unions shall be organized to the extent practicable to offer a comprehensive program of instruction in kindergarten or grade one through twelve which meets the needs of children. Factors to be considered in the needs assessment shall include the educational programs and services to meet the needs of regular and exceptional children and support services and programs.

Needs assessments shall be conducted according to procedures developed by the Department of Education.

3223.1 The supervisory union shall provide educational and administrative leadership and supervision at a reasonable cost consistent with local taxable wealth and state and federal financial support.

3223.2 A supervisory union shall be a contiguous geographic unit with consideration given to whether there are community characteristics that will assist in deciding its boundary.

3230 Vacancy of Superintendency

3231 Notification

The chair of a supervisory union/district board shall notify the Commissioner of Education as soon as the board becomes aware of an impending vacancy in the superintendency of the supervisory union/district.

3232 Recruitment Initiated

Within two calendar weeks of notification by the supervisory union/district board chair the Commissioner shall advise the chair that either of the following applies:

3232.1 The process of recruiting a new superintendent may proceed, or

3232.2 The Commissioner will recommend to the state board that the supervisory union/district be placed under state board consideration for supervisory union change. The Commissioner may authorize the recruitment for and hiring of an interim superintendent for a specified time period if necessary to fill a vacancy. However, the supervisory union/district board may not hire a permanent superintendent until the state board has completed its deliberations regarding changes if any, in the supervisory union/district.

3240 Superintendent

3241 Qualifications. A superintendent shall be certified in accordance with state law (See Section 5000 of this manual).

3250 Fiscal Operations

3250.1 Accounting

Accounting systems will meet governmental generally accepted accounting principles for state and local governments and will follow, at a minimum, the code structure contained in the Handbook for Financial Accounting of Vermont School Systems. Financial Code Classification System (16 VSA 164 (15)).

3250.2 Receipt of Grant Funds

To receive grant federal or state funds, entities must:

- (a) have the approval of the governing board,
- (b) be an eligible recipient under the applicable state and/or federal regulations,
- (c) file an application form with the Department of Education,
- (d) meet reporting requirements as to forms and timelines,
- (e) have the chief administrative officer sign all forms,
- (f) expend funds within state and/or federal grant regulations,

- (g) meet all state and federal audit requirements, and
- (h) return any funds cited as expenditures/revenues not meeting program regulations (16 VSA 164 (15)).

3250.3 Employment of Personnel

Each supervisory union shall employ or contract with a person(s) qualified by education and/or experience to maintain the accounting system on a double entry accrual or modified accrual basis in accordance with governmental generally accepted accounting principles (16 VSA 261a (7)).

3260 Definition of Enrolled Pupils

3260.1 For the purpose of calculating a member school district's proportionate share of the superintendent's salary and expenses and the other expenses of the supervisory union pursuant to 16 VSA 301, unless otherwise agreed upon, the term "enrolled pupil" means that actual number of students enrolled in the school as of the 40th day of school.

Special and vocational education pupils shall be counted for the purposes of calculation proportionate share in the same manner as set forth above.

3300 Australian Ballot Budget Votes Under Act 60

Australian ballot budget articles pursuant to 16 VSA §§428(a), 511(a) and 711a(a) shall substantially conform to the following:

"Shall the voters of the _____ (town) (incorporated) (union) school district appropriate \$_____ necessary for the support of its schools for the year beginning July 1, _____?"

Effective 2/19/04

4000 Unsafe School Choice Option Policy

- (a) **Unsafe school choice** - Each local education agency shall ensure that any student who either attends a persistently dangerous public elementary or secondary school, or is a victim of a violent criminal offense that occurred in or on the grounds of a public elementary or secondary school that the student attends, shall be allowed to attend a safe public school at the same grade level within that local education agency. For purposes of this section, a “safe public school” shall mean a public school that has not been designated by the Department of Education as a persistently dangerous public elementary or secondary school.
- (b) **Persistently dangerous school** – Each local education agency shall, by June 1, furnish data requested by the Commissioner on whether its schools are persistently dangerous. If data becomes available after June 1, but before June 30, the report shall be amended by the local education agency. The Commissioner shall determine by June 30 whether and which schools are persistently dangerous. A school shall be designated as persistently dangerous if all of the criteria in (1) – (3) below are met for each of the immediately prior three school years:
- (1) 3% or more of the student enrollment or, with respect to a school with a student enrollment of less than a hundred, at least three students, have been expelled for violence-related incidents that occurred in or on the grounds of the school;
 - (2) One or more students have been expelled for possessing a weapon in or on the grounds of the school. For purposes of this section “weapon” means a dangerous or deadly weapon within the meaning of 13 V.S.A. §4016(a)(2); and
 - (3) 3% or more of the student enrollment or, with respect to schools with a student enrollment of less than a hundred, at least three students, have been determined to be victims of violent criminal offenses and have exercised the school choice option described in subsection (a), above. This criterion is inapplicable with respect to any school year prior to July 1, 2003.
- (c) **Duration of designation** – A school that has been designated as being persistently dangerous shall continue to be so designated until such time as two consecutive school years have passed in which the school has met less than all of the criteria set forth in subsections (b)(1) - (3), above.
- (d) **Victims of violent criminal offenses** – When a student seeks to exercise school choice as the victim of a violent criminal offense, the principal shall determine whether that student is the victim of a violent criminal offense that occurred in or on the grounds of the school that the student attends. Such principal shall, prior to making any such determination, consult with any law enforcement agency investigating such alleged violent criminal offense and consider any reports or records provided by such agency. The principal may conclude that a student has been a victim of a violent criminal offense where either: (1) the perpetrator has admitted the violent conduct, or (2) the evidence against the perpetrator allows for no

reasonable doubt that he or she committed the offense. The determination of the principal may be appealed by or on behalf of a student claiming to be the victim of a violent offense to the superintendent, and then to the school board for the district. For purposes of this section, "violent criminal offense" shall mean any simple assault as defined in 13 V.S.A. §1023 that results in bodily injury, or any crime listed under 13 V.S.A. §5301(7)(A)-(I), (M), (N) & (P)-(T).

- (e) Transfer** - Any student who transfers to a safe public school pursuant to subsection (a), above, shall be enrolled in the classes and other activities of the public school to which such student transfers in the same manner as all other children at that public school.
- (f) Notification** - Each local education agency that is required to provide school choice pursuant to the provisions of this section shall promptly notify parents of, or persons in parental relation to students: (1) attending schools that have been designated as persistently dangerous, or (2) who are victims of violent criminal offenses of their right to transfer to a safe public school within the local education agency, and of the procedures for such transfer. Nothing in this section shall be construed to require such notification if there are no other public schools within the local education agency at the same grade level.
- (g) Duration of unsafe school choice** – Any student who transfers to a safe public school pursuant to subsection (a), above, shall be permitted to remain in such safe public school until the end of the last grade-level offered at the school from which he or she transferred.
- (h) Designating a safe public school** - When a school has been designated as a persistently dangerous public elementary or secondary school, or when a student has been the victim of a violent criminal offense that occurred in or on the grounds of a public elementary or secondary school that the student attends, it shall be the responsibility of the local education agency, after consultation with the student's parents, based on objective criteria, to designate a safe public school or schools within the local education agency to which the student(s) may transfer. Nothing in this subdivision shall be construed to require a local education agency to designate a safe public school if there are no other public schools within the local education agency at the same grade level.
- (i) Transportation** - Consistent with the criteria of its transportation policy, the local education agency shall provide transportation for any student permitted to transfer to the safe public school within the local education agency it has designated pursuant to subdivision (h) of this section.
- (j) Definition of local education agency** – For purposes of this section, "local education agency" shall mean a school district, as defined in 16 V.S.A. §11(a)(10).

August 29, 2003

4100 STUDENT SAFETY

4100 Statutory Authority

The Vermont Statutes Annotated addresses the areas of school attendance, truancy, discipline, punishment, health, safety, and transportation. Refer to the statutes for specific laws.

The subject of “student records” is addressed elsewhere in this manual. [Editor’s Note: See Rule 2120.8.3.3]

- 4101 Every school district receiving federal and/or state funds for program support will develop a program of safety, institute that safety program, and monitor it to make sure it is kept current.

- 4102 Superintendents and school boards shall develop a comprehensive emergency plan for each school that will be updated and tested annually and a functional emergency organization.

The plan shall include provision of such disasters as fire, smoke, tornado, nuclear disaster, snow, blizzard, ice, flood, earthquake, bomb threat, civil disturbance, bus accidents and other emergencies.

4200 Alcohol and Drugs

- 4210 Statutory Authority: 16 VSA §1165

4211 Definition

Alcohol and drug abuse (substance abuse) shall be defined as: “the ingestion of a substance in such a way that it interferes with a person’s ability to perform physically, intellectually, emotionally or socially.”
Vermont Office of Alcohol and Drug Abuse Programs.

4212 Policy Requirements

School districts shall adopt an alcohol and drug abuse policy which shall contain the following:

4212.1 Statement of Philosophy.

This policy shall be concerned with the health and well being of all students and the policy shall take into consideration the individual needs of students with problems as well as the right of the majority of students to an education.

4212.2 Education Program.

The policy shall define an educational program consistent with the Vermont Alcohol and Drug Education Curriculum Plan

4212.3 Support and Referral Systems and Cooperative Agreements.

The policy shall provide for a support and referral system for students in distress due to their own or another's use of alcohol or other drugs. Such a system shall include both a clearly defined in-school process for initial assessment, support, and if necessary, referral to community resources of such students, and a written referral agreement with at least one community substance abuse treatment provider approved by the Office of Alcohol and Drug Abuse Programs. Such an agreement should define the process for making an effective referral and the nature and extent of information to be provided during and after such a referral to all parties involved.

4212.3A Immediate Procedures

The policy shall provide for the handling of any alcohol/drug related incident until the student has been discharged to the parent, guardian, social service, medical or law enforcement agency.

4212.3B Emergency

The school district policy shall establish procedures for administering emergency first aid related to alcohol and drug abuse. The procedures will define the roles of the personnel involved.

4212.3C Possession, distribution, etc.

The school shall have a procedure that requires the administration to be immediately informed by a school staff member of any violation of the law, including illegal possession or distribution of drugs or alcohol. The administration shall follow the appropriate legal procedures and due process of law for discipline.

4212.3D Performance and Behavior Related Problems

School district policy shall designate staff available for consultation with a student whose behavior or performance may indicate a problem with alcohol or drug abuse. This staff will determine the need for further screening, education, counseling, or referral for treatment.

4213 Procedures for education

4213.1 Schools shall develop a sequential K-12 alcohol and drug abuse prevention education curriculum as defined in Vermont State Alcohol and Drug Education Curriculum Plan and in Health Education and Traffic Safety and Driver Education requirements of the Standards for Approving Vermont's Public Schools.

4213.2 Schools shall provide for training of school staff such that teachers and health and guidance personnel have a sufficient level of professional development to enable them to competently teach or provide other services required in the school's alcohol and drug abuse prevention education program. A minimum training program should be directed toward the following areas:

- Pharmacology
- Chemical Use, Abuse, and Dependence
- Chemical Dependence and the Family
- Societal and Personal Attitudes
- Policy and Legal Issues
- Support and referral Systems for Students in Distress
- Curriculum Development, Methods, and Classroom Issues
- School Climate
- Drinking and Driving

In addition there shall be an orientation for the entire school community on the program, its intent, and alcohol and drug issues in general.

4214 Community Involvement

Schools shall provide for a program to inform the community about the school's alcohol and drug prevention education program, alcohol and drug abuse prevention issues, and community-wide responsibility for effective alcohol and drug abuse prevention.

4215 Annual Report

Schools shall submit an annual report, due to the Commissioner of Education by July 1 of each year, which includes a description of the school's alcohol and drug abuse prevention program, the apparent effectiveness of the program, an evaluation of the curriculum, and an assessment of the problems of alcohol and drug abuse within the school district. This report shall use the standard format provided by the Department of Education.

4220 Prescription Drugs

4221 Statement of Purpose

Many children are able to attend regular school because of the effective use of medication in the treatment of chronic disabilities or illnesses. When possible medication shall be administered in the home. However, any student who is required to take medication during the regular school days must comply with the school regulations, which shall require the following.

4222 Procedures

The school shall assure that the following are provided:

4222.1 Written orders from a physician detailing the name of the drug, dosage, time interval the medication is to be taken, diagnosis, and reason for giving.

4222.2 Written permission from the parent or guardian requesting that the school district comply with the physician's order.

4222.3 Medication brought to school in a container appropriately labeled by the pharmacy or physician.

4222.4 A locked cabinet for storage of medications.

4222.5 Opportunities for communication with the pupil, parent, and physician regarding the efficacy of the medication administered during school hours.

4300 Disciplinary Action

4310 Statutory Authority 16 VSA §1162

4311 Procedures

When a student is subject to disciplinary action, the school district shall afford the student due process procedures as follows:

4311.1 In all cases of short-term suspension from school, which is generally regarded as 10 days or less, the student and his or her parent/guardian shall be given an opportunity for an informal hearing before an appropriately designated school official. Except for cases set forth in paragraph 4311.3, the hearing must precede the suspension and the district shall provide:

- (1) notice of the charges;

- (2) explanation of the evidence against the student;
- (3) opportunity for the student to tell his or her side of the story; and
- (4) decision in writing to the parent/guardian.

4311.2 In cases of a long term suspension which is generally more than 10 days unless a school district establishes a shorter period, or an expulsion, the student and his or her parent/guardian shall be given an opportunity for a formal hearing before the school board and the district shall provide:

- (1) written notice of the following:
 - (a) nature of charges against the student;
 - (b) date, time and place of hearing;
 - (c) right to legal representation;
 - (d) possible penalties involved;
- (2) opportunity to present evidence;
- (3) opportunity to cross-examine witnesses; and
- (4) decision in writing to parent/guardian

4311.3 (1) When a student, because of his or her conduct or condition, is an immediate threat to himself or herself, others, property or educational environment, the school district may take whatever action is appropriate under the circumstances, including, but not limited to, immediate suspension pending a hearing as soon as possible thereafter. In addition, in cases where a student brings a weapon (as defined in the federal Gun-Free School Act) to school, the school district must refer the student to a law enforcement agency and expel the student for a period of not less than one calendar year unless such expulsion is modified in accordance with the provision of 16 VSA §1166(b)(2) in circumstances such as but not limited to:

- (a) the student is unaware that he or she has brought a weapon to school,

- (b) the student did not intend to use the weapon to threaten or endanger others,
- (c) the student is disabled and the misconduct is related to the disability,
- (d) the student does not present an ongoing threat to others and a lengthy expulsion would not serve the best interest of the student.

- (2) In situations where a student with a disability brings a weapon to school, the provisions of regulation 4312(2) shall apply. In any such situation, an opportunity for a hearing prior to an expulsion must be provided prior to the expulsion, pursuant to 16 VSA §1166(b)(2)

4312 Discipline Procedures for Students Who are Not Eligible for Special Education Services, but Who Are or May Be Qualified Individuals with Disabilities under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794; 34 CFR §104 et seq.)

In addition to the general disciplinary procedures found within Rule 4311, and in accordance with 34 CFR §104.36, the following procedures apply to children who are qualified individuals with disabilities as defined by Section 504 of the Rehabilitation Act of 1973 (hereinafter Section 504).

- (1) A Section 504 student shall not be removed from his or her current educational placement for disciplinary reasons for more than 10 consecutive school days in a school year unless the following procedures have been completed:
 - (a) A re-evaluation, as defined by 34 CFR §104.35; and
 - (b) A determination by the student's Section 504 team that the conduct is not a manifestation of his or her disability.
- (2) A Section 504 student shall not be removed from his or her current educational placement for disciplinary reasons for more than 10 cumulative days in a school year when the removals constitute a change in placement as defined in Rule 2360.2(d)(1) unless the following procedures have been completed:
 - (a) A re-evaluation as defined by 34 CFR §104.35; and
 - (b) A determination by the student's Section 504 team that the conduct is not a manifestation of his or her disability.

- (3) When it is determined by a student's 504 team that the conduct is not a manifestation of the student's qualifying disability, the student may be disciplined in the same manner, and subject to the same disciplinary consequences, as a non-disabled child, including suspension or expulsion without the provision of services.
- (4) When it is determined by a student's Section 504 team that the conduct is a manifestation of his or her qualifying disability, a change in program or placement may be implemented by the student's Section 504 team and the student's section 504 team may respond to the conduct by designing, amending and/or enforcing a plan of behavior management.
- (5) If, at the time of the occurrence of conduct that gives rise to consideration of removal of a student from his or her current educational placement for more than 10 consecutive school days in a school year, the student is believed to be a qualified individual with a disability under Section 504, a Section 504 evaluation shall be completed prior to imposition of the removal.
 - (a) If the evaluation results in a determination that the student is a qualified individual with a disability under Section 504, the discipline procedures in this rule shall be followed.
 - (b) If the evaluation results in a determination that the student is not a qualified individual with a disability under Section 504, the discipline procedures in Rule 4311 shall be followed.
- (6) If, at the time of the occurrence of conduct that gives rise to consideration of removal of a student who is believed to be a qualified individual with a disability under Section 504 for more than 10 cumulative school days in a school year, and the removals constitute a change in placement as defined in Rule 2360.2(d)(1), a Section 504 evaluation shall be completed prior to imposition of the removal.
 - (a) If the evaluation results in a determination that the student is a qualified individual with a disability under Section 504, the discipline procedures in this rule shall be followed.
 - (b) If the evaluation results in a determination that the student is not a qualified individual with a disability under Section 504, the discipline procedures in Rule 4311 shall be followed.

- (7) If a child who is a qualified individual under Section 504 possesses or carries a weapon, as defined in Rule 4313.9(a), to school or at a school function, he or she may be placed in an interim alternative educational setting (IAES) in accordance with the procedures set forth in Rule 4313.9 and Rule 1253. The student's 504 team shall determine the IAES, and the services provided in the IAES, in accordance with the procedures set forth in Rule 4313.9. It is the intent of this section to discipline a child who is a qualified individual under Section 504 in the same manner as students who are eligible for special education when they possess weapons at school or at school functions.
- (8) When a parent disagrees with disciplinary action taken by a school district, the parent may request an impartial due process hearing, and the procedures in Rules 2365.1.6(c) through 2365.1.9 shall apply. In addition to or in lieu of a due process hearing a parent may file a complaint with the U.S. Department of Education Office for Civil Rights.
- (9) A hearing officer may order a change in the placement of a child who is a qualified individual under Section 504 to an appropriate IAES for not more than 45 calendar days if the hearing officer, in an expedited due process hearing:
 - (a) Determines that the school district has demonstrated by substantial evidence which, for purposes of this section, shall mean a preponderance of the evidence, that maintaining the current placement of the child is substantially likely to result in injury to the child or others.
 - (b) Considers the appropriateness of the child's current placement;
 - (c) Considers whether the school district has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
 - (d) Determines that the IAES that is proposed by school personnel will enable the child to continue to progress in the general curriculum. The services provided to and modifications made for the child in the IAES shall be designed to address and prevent the child's offending behavior.

(10) This Rule (4312) shall not apply when a responsible agency takes disciplinary action against a Section 504 student if:

- (a) The misconduct for which the student is being disciplined pertains to the use or possession of illegal drugs or alcohol at school or at a school function; and
- (b) The student is currently engaging in the use of alcohol or illegal drugs.

In this instance, the Section 504 student shall be disciplined in accordance with Rule 4311.

4313 Discipline Procedures for Students Eligible for Special Education Services

In addition to the general disciplinary procedures found within Rule 4300, the following procedures apply to children eligible for special education services:

4313.1 Authority of School Personnel to Order Short-term Removals

Except as set forth in Rules 4313.5(a), 4313.8 and 4313.9, or as otherwise provided by law:

- (a) To the extent a removal would be applied to a child who was not eligible for special education services, an eligible child may be removed from the educational setting by the school principal with the agreement of the special education administrator (who can be the case manager) for not more than ten consecutive school days for any violation of school rules.
- (b) During the same school year, additional removals of not more than ten consecutive school days each may be ordered for separate incidents of misconduct, so long as those removals do not constitute a change of placement, as defined in Rule 4313.2.

4313.2 Change of Placement

For purposes of Rules 4313.1 to 4313.13:

- (a) A “change of placement” occurs if a child’s removal from his or her current educational placement for disciplinary reasons is for more than ten consecutive school days.

- (b) A “change of placement” occurs if the child is subjected to a series of removals that:
 - (1) Add up to more than ten school days in a school year, and
 - (2) Constitute a pattern based upon such factors as:
 - (i) The length of each removal, the total amount of time the child is removed;
 - (ii) The proximity of the removals to one another; and
 - (iii) The reasons for the removals.
 - (3) The determination as to whether a change of placement has occurred shall be made by the school principal with the agreement of the school district’s/supervisory union’s Director of Special Education. Where no such agreement is reached, a change of placement shall be deemed to have occurred.

4313.3 Functional Behavioral Assessments and Behavioral Intervention Plans

- (a) Not later than ten business days after first removing the child for more than ten school days in a school year or commencing a removal that constitutes a change of placement, an IEP meeting shall be convened to develop an assessment plan. An assessment plan need not be developed if, prior to the behavior that resulted in the removal, the school district had conducted a functional behavioral assessment and implemented a behavioral intervention plan. If the child already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation, and modify the plan and its implementation, as necessary, to address the behavior.
- (b) As soon as is practical after developing the assessment plan, and completing any assessments required by the plan, the school district shall convene an IEP meeting to develop and implement appropriate behavioral interventions to address that behavior.

- (c) If, subsequently, an eligible child who has a behavioral intervention plan and who has been removed from his or her current educational placement for more than ten school days in a school year is subjected to a removal that does not constitute a change of placement, the IEP team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary. If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

4313.4 Manifestation Determination Review

- (a) If a change of placement or placement in an interim alternative educational setting (IAES) is contemplated, the child's parents shall be notified of that decision on the day it is made and shall be provided with a procedural safeguard notice, as described in Rule 2365.1.2. As soon as possible, but no later than ten school days after the decision is made, a review must be conducted of the relationship between the child's disability and the behavior that is the subject of the disciplinary action. This review shall be conducted at a meeting of the student's IEP team and other qualified personnel.
- (b) In conducting a manifestation determination review, the IEP team shall consider all relevant information, such as evaluation and diagnostic results, including:
 - (1) the results or other relevant information supplied by the parents of the child;
 - (2) observations of the child; and
 - (3) the child's IEP and placement.
- (c) The child's behavior shall be considered to be a manifestation of his disability unless it is determined that:
 - (1) In relationship to the child's behavior that is the subject of the disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavioral intervention strategies were

provided consistent with the child's IEP and placement;

- (2) The child's disability did not impair the ability of the child to understand the impact and consequences of the behavior that is the subject of the disciplinary action; and
- (3) The child's disability did not impair the child's ability to control that behavior.
- (d) If, during the manifestation determination review, it is determined that there are deficiencies in the child's IEP or placement, immediate steps must be taken to remedy those deficiencies.
- (e) The manifestation determination review may occur at the same IEP meeting where the functional behavioral assessment or the behavioral intervention plan is considered.

4313.5 Determination that Behavior Was Not A Manifestation of Disability

If it is determined that the child's behavior was not a manifestation of his or her disability:

- (a) The child may be disciplined in the same manner as would children without disabilities.
- (b) The special education and disciplinary records of the child shall be transmitted to the person or persons making the final determination regarding the disciplinary action.
- (c) The IEP team shall determine and the school district provide educational services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP.

4313.6 Determination that Behavior Was a Manifestation of Disability

If it is determined that the child's behavior was a manifestation of his or her disability, the school district must:

- (a) Remedy any deficiencies found in the child's IEP or placement or their implementation;
- (a) Consider the appropriateness of continued placement in the IAES, if that is where the child was placed pending the results of the manifestation determination review described in Rule 4313.4; and
- (b) Not implement a change in placement as a disciplinary action unless Section (b) above applies.

4313.7 Parent appeal of Non-manifestation Determination Decision

- (a) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of a disability, the parent may request a due process hearing, in which case an expedited hearing, conducted by an impartial hearing officer in accord with Rule 2365.1.7, shall be arranged to take up the matter.
- (b) In reviewing a manifestation determination, the burden of proof is on the school district to demonstrate that the child's behavior was not a manifestation of the child's disability.

4313.8 Authority of Hearing Officer to Order IAES Placement

A hearing officer may order a change in the placement of a child eligible for special education to an appropriate IAES for not more than 45 calendar days, if the hearing officer, in an expedited due process hearing:

- (a) Determines that the school district has demonstrated by substantial evidence, which for purposes of this section shall mean a preponderance of the evidence, that maintaining the current placement of the child is substantially likely to result in injury to the child or others;
- (b) Considers the appropriateness of the child's current placement;
- (c) Considers whether the school district has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

- (d) Determines that the IAES that is proposed by school personnel, who have consulted with the child's special education teacher, will enable the child to continue to progress in the general curriculum. While in the IAES, the child must receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP. The services provided to and modifications made for, the child in the IAES shall be designed to address and prevent the child's offending behavior.

4313.9 Removals for Weapons or Drugs

This rule applies to eligible children who:

- (1) possess or carry a weapon at school or a school function; or
- (2) knowingly possess or use drugs, not including alcohol or tobacco products, or sell or solicit the sale of a controlled substance while at school or a school function. In those situations, school personnel may make a change of placement by putting the child in an IAES for not more than 45 calendar days, if a child without a disability would be subject to discipline for the same amount of time. The IAES must be determined by the IEP team and be selected to enable the child to continue to progress in the general curriculum. While in the IAES, the child must receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP. The services provided to, and modifications made for, the child in the IAES shall be designed to address and prevent the child's offending behavior. For purposes of this rule,
 - (a) "Weapon" means a "dangerous weapon", as defined by 18 USC Section 930(g)(2), which is "a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 _ inches in length."
 - (b) "Controlled substance" means a drug or other substance identified under schedules I, II, III, IV, or V in Section 202(c) of the Federal Controlled Substances Act (21 USC Section 812(c)).

- (c) “Illegal drug” means a controlled substance but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substance Act or under any other provision of Federal law.

4313.10 Parent Appeal of School District Placement Decision

- (a) If the child’s parent disagrees with a decision regarding a school district’s placement made under these disciplinary procedures, including removal to an IAES, the parent may request a due process hearing, in which case an expedited hearing shall be arranged to take up the matter.
- (b) In reviewing a decision of the school district to place the child in an IAES, the hearing officer shall apply the standards in Rule 4313.8 above.

4313.11 Placement During Discipline Appeals

- (a) If a parent requests a due process hearing to challenge an IAES placement or a manifestation determination, the child shall remain in the IAES pending the decision of the hearing officer or until the expiration of 45 calendar days from the time the placement was made, whichever occurs first, unless the parent and the school district agree otherwise.
- (b) If a child is placed in an IAES and the school district proposes to change the child’s placement after expiration of the IAES, during the pendency of any proceeding to challenge the proposed change in placement, the child shall remain in the placement immediately prior to the IAES except as provided in section (c) below.
- (c) If the school district determines that it is dangerous for the child to be in the placement immediately prior to the IAES, it may request an expedited due process hearing. At that hearing, the hearing officer shall apply the standards detailed in Rule 4313.8 above to determine whether the child should remain in the IAES for up to another 45 calendar days or be put in another appropriate placement. This procedure may be repeated as often as necessary for the safety of the child or others.

4313.12 Decisions Resulting From Expedited Due Process Hearings

Except as stated in this section, all procedures set forth in Rules 2365.1.6 – 2365.1.9 shall apply to expedited due process hearings brought pursuant to Rules 4313.7, 4313.8, 4313.10 and 4313.11. In all cases, written decisions from expedited due process hearings shall be mailed to the parties within 45 calendar days of the Department of Education's receipt of the request for the hearings. No exceptions or extensions shall be permitted. A decision in an expedited due process hearing is appealable to any Vermont court of competent jurisdiction or the United States District Court for the District of Vermont.

4313.13 Educational Services During Removals

After an eligible child has been removed for more than ten cumulative school days in the same school year, the school district shall provide that child with educational services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP. The child's IEP team shall determine the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the removals follow a determination under Rule 4313.4 that the conduct was not a manifestation of the child's disability. School personnel shall determine the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the removals are pursuant to Rule 4313.1.

4313.14 Protections for Children Not Yet Eligible for Special Education Services

- (a) A child who has not been determined to be eligible for special education services who has engaged in behavior that makes him or her subject to disciplinary action may assert any of the protections detailed in Rule 4313 if it can be shown that the school district had knowledge that the child was eligible for special education services before the behavior that precipitated the disciplinary action occurred.

- (b) For purposes of this section, a school district is deemed to have “had knowledge that the child was eligible for special education services before the behavior that precipitated the disciplinary action occurred” if:
 - (1) The child’s parent had expressed concern that the child was in need of special education services. The concern must be in writing unless the parent does not know how to write or has a disability that prevented a written statement;
 - (2) The behavior or performance of the child demonstrates the need for special education services pursuant to Rule 2362;
 - (3) The parent has requested a special education evaluation of the child; or
 - (4) The child’s teacher or other personnel of the school district has expressed concern about the child to the director of special education of the school district or to other personnel in accordance with the school district’s child-find or special education referral system.
- (c) A school district would not be deemed to have knowledge under the prior provision if, as a result of receiving information specified in that provision, it conducted an evaluation and determined that the child was not eligible for special education services, or it had been determined that an evaluation was not necessary and provided proper notice of the determination to the parents.
- (d) If the school district did not have prior knowledge that the child was eligible for special education services, the child may be disciplined in the same manner, as would children without disabilities. If a request for an evaluation is made during the time the child is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the child shall remain in the educational setting determined by school authorities, which can include suspension or expulsion without educational services. If the child is determined to be eligible for special education services, taking into consideration information from the evaluation conducted by the school district and information provided by the parent, services shall be provided in accordance with these Rules.

4313.15 Referral to and Action by Law Enforcement and Judicial
Authorities

Nothing in these Rules prohibits a school district from reporting a crime suspected of having been committed by a child eligible for special education services. Disclosure of special education records may be made to law enforcement and judicial authorities only as permitted by Rule 2365.2.12.

4312-4313.15 Approved 8/16/2001

4313.1(a) and 4313.2(b)(3) Approved 8/29/2003

April 6, 1987

4100 STUDENT SAFETY

4100 Statutory Authority

The Vermont Statutes Annotated addresses the areas of school attendance, truancy, discipline, punishment, health, safety, and transportation. Refer to the statutes for specific laws.

The subject of “student records” is addressed elsewhere in this manual. [Editor’s Note: See Rule 2120.8.3.3]

4101 Every school district receiving federal and/or state funds for program support will develop a program of safety, institute that safety program, and monitor it to make sure it is kept current.

4102 Superintendents and school boards shall develop a comprehensive emergency plan for each school that will be updated and tested annually and a functional emergency organization.

The plan shall include provision of such disasters as fire, smoke, tornado, nuclear disaster, snow, blizzard, ice, flood, earthquake, bomb threat, civil disturbance, bus accidents and other emergencies.

4200 Alcohol and Drugs

4210 Statutory Authority: 16 VSA §1165

4211 Definition

Alcohol and drug abuse (substance abuse) shall be defined as: “the ingestion of a substance in such a way that it interferes with a person’s ability to perform physically, intellectually, emotionally or socially.”

Vermont Office of Alcohol and Drug Abuse Programs.

4212 Policy Requirements

School districts shall adopt an alcohol and drug abuse policy which shall contain the following:

4212.1 Statement of Philosophy.

This policy shall be concerned with the health and well being of all students and the policy shall take into consideration the individual needs of students with problems as well as the right of the majority of students to an education.

4212.2 Education Program.

The policy shall define an educational program consistent with the Vermont Alcohol and Drug Education Curriculum Plan

4212.3 Support and Referral Systems and Cooperative Agreements.

The policy shall provide for a support and referral system for students in distress due to their own or another's use of alcohol or other drugs. Such a system shall include both a clearly defined in-school process for initial assessment, support, and if necessary, referral to community resources of such students, and a written referral agreement with at least one community substance abuse treatment provider approved by the Office of Alcohol and Drug Abuse Programs. Such an agreement should define the process for making an effective referral and the nature and extent of information to be provided during and after such a referral to all parties involved.

4212.3A Immediate Procedures

The policy shall provide for the handling of any alcohol/drug related incident until the student has been discharged to the parent, guardian, social service, medical or law enforcement agency.

4212.3B Emergency

The school district policy shall establish procedures for administering emergency first aid related to alcohol and drug abuse. The procedures will define the roles of the personnel involved.

4212.3C Possession, distribution, etc.

The school shall have a procedure that requires the administration to be immediately informed by a school staff member of any violation of the law, including illegal possession or distribution of drugs or alcohol. The administration shall follow the appropriate legal procedures and due process of law for discipline.

4212.3D Performance and Behavior Related Problems

School district policy shall designate staff available for consultation with a student whose behavior or performance may indicate a problem with alcohol or drug abuse. This staff will determine the need for further screening, education, counseling, or referral for treatment.

4213 Procedures for education

4213.1 Schools shall develop a sequential K-12 alcohol and drug abuse prevention education curriculum as defined in Vermont State Alcohol and Drug Education Curriculum Plan and in Health Education and Traffic Safety and Driver Education requirements of the Standards for Approving Vermont's Public Schools.

4213.2 Schools shall provide for training of school staff such that teachers and health and guidance personnel have a sufficient level of professional development to enable them to competently teach or provide other services required in the school's alcohol and drug abuse prevention education program. A minimum training program should be directed toward the following areas:

- Pharmacology
- Chemical Use, Abuse, and Dependence
- Chemical Dependence and the Family
- Societal and Personal Attitudes
- Policy and Legal Issues
- Support and referral Systems for Students in Distress
- Curriculum Development, Methods, and Classroom Issues
- School Climate
- Drinking and Driving

In addition there shall be an orientation for the entire school community on the program, its intent, and alcohol and drug issues in general.

4214 Community Involvement

Schools shall provide for a program to inform the community about the school's alcohol and drug prevention education program, alcohol and drug abuse prevention issues, and community-wide responsibility for effective alcohol and drug abuse prevention.

4215 Annual Report

Schools shall submit an annual report, due to the Commissioner of Education by July 1 of each year, which includes a description of the school's alcohol and drug abuse prevention program, the apparent effectiveness of the program, an evaluation of the curriculum, and an assessment of the problems of alcohol and drug abuse within the school district. This report shall use the standard format provided by the Department of Education.

4220 Prescription Drugs

4221 Statement of Purpose

Many children are able to attend regular school because of the effective use of medication in the treatment of chronic disabilities or illnesses. When possible medication shall be administered in the home. However, any student who is required to take medication during the regular school days must comply with the school regulations, which shall require the following.

4222 Procedures

The school shall assure that the following are provided:

4222.1 Written orders from a physician detailing the name of the drug, dosage, time interval the medication is to be taken, diagnosis, and reason for giving.

4222.2 Written permission from the parent or guardian requesting that the school district comply with the physician's order.

4222.3 Medication brought to school in a container appropriately labeled by the pharmacy or physician.

4222.4 A locked cabinet for storage of medications.

4222.5 Opportunities for communication with the pupil, parent, and physician regarding the efficacy of the medication administered during school hours.

September 17, 2007

4300 Disciplinary Action

4310 Statutory Authority 16 VSA §1162

4311 Procedures

When a student is subject to disciplinary action, the school district shall afford the student due process procedures as follows:

4311.1 In all cases of short-term suspension from school, which is generally regarded as 10 days or less, the student and his or her parent/guardian shall be given an opportunity for an informal hearing before an appropriately designated school official. Except for cases set forth in paragraph 4311.3, the hearing must precede the suspension and the district shall provide:

- (1) notice of the charges;
- (2) explanation of the evidence against the student;
- (3) opportunity for the student to tell his or her side of the story; and
- (4) decision in writing to the parent/guardian.

4311.2 In cases of a long term suspension which is generally more than 10 days unless a school district establishes a shorter period, or an expulsion, the student and his or her parent/guardian shall be given an opportunity for a formal hearing before the school board and the district shall provide:

- (1) written notice of the following:
 - (a) nature of charges against the student;
 - (b) date, time and place of hearing;
 - (c) right to legal representation;
 - (d) possible penalties involved;
- (2) opportunity to present evidence;
- (3) opportunity to cross-examine witnesses; and
- (4) decision in writing to parent/guardian

- 4311.3 (1) When a student, because of his or her conduct or condition, is an immediate threat to himself or herself, others, property or educational environment, the school district may take whatever action is appropriate under the circumstances, including, but not limited to, immediate suspension pending a hearing as soon as possible thereafter. In addition, in cases where a student brings a weapon (as defined in the federal Gun-Free School Act) to school, the school district must refer the student to a law enforcement agency and expel the student for a period of not less than one calendar year unless such expulsion is modified in accordance with the provision of 16 VSA §1166(b)(2) in circumstances such as but not limited to:
- (a) the student is unaware that he or she has brought a weapon to school,
 - (b) the student did not intend to use the weapon to threaten or endanger others,
 - (c) the student is disabled and the misconduct is related to the disability,
 - (d) the student does not present an ongoing threat to others and a lengthy expulsion would not serve the best interest of the student.
- (2) In situations where a student with a disability brings a weapon to school, the provisions of regulation 4312(2) shall apply. In any such situation, an opportunity for a hearing prior to an expulsion must be provided prior to the expulsion, pursuant to 16 VSA §1166(b)(2)

4312 Discipline Procedures for Students Who are Not Eligible for Special Education Services, but Who Are or May Be Qualified Individuals with Disabilities under Section 504 of The Rehabilitation Act of 1973 (29 U.S.C. § 794; 34 C.F.R. § 104 et seq.)

In addition to the general disciplinary procedures found within Rule 4311, and in accordance with 34 C.F.R. §104.36, the following procedures apply to children who are qualified individuals with disabilities as defined by Section 504 of the Rehabilitation Act of 1973 (hereinafter Section 504).

- (1) A Section 504 student shall not be removed from his or her current educational placement for disciplinary reasons for more than 10 consecutive school days in a school year unless the following procedures have been completed:
- (a) A re-evaluation, as defined by 34 C.F.R. §104.35; and

- (b) A determination by the student's Section 504 team that the conduct is not a manifestation of his or her disability.
- (2) A Section 504 student shall not be removed from his or her current educational placement for disciplinary reasons for more than 10 cumulative days in a school year when the removals constitute a change in placement as defined in Rule 2360.2(d)(1) unless the following procedures have been completed:
 - (a) A re-evaluation, as defined by 34 C.F.R. §104.35; and
 - (b) A determination by the student's Section 504 team that the conduct is not a manifestation of his or her disability.
- (3) When it is determined by a student's 504 team that the conduct is not a manifestation of the student's qualifying disability, the student may be disciplined in the same manner, and subject to the same disciplinary consequences, as a non-disabled child, including suspension or expulsion without the provision of services.
- (4) When it is determined by a student's Section 504 team that the conduct is a manifestation of his or her qualifying disability, a change in program or placement may be implemented by the student's Section 504 team and the student's Section 504 team may respond to the conduct by designing, amending and/or enforcing a plan of behavior management.
- (5) If, at the time of the occurrence of conduct that gives rise to consideration of removal of a student from his or her current educational placement for more than 10 consecutive school days in a school year, the student is believed to be a qualified individual with a disability under Section 504, a Section 504 evaluation shall be completed prior to imposition of the removal.
 - (a) If the evaluation results in a determination that the student is a qualified individual with a disability under Section 504, the discipline procedures in this rule shall be followed.
 - (b) If the evaluation results in a determination that the student is not a qualified individual with a disability under Section 504, the discipline procedures in Rule 4311 shall be followed.
- (6) If, at the time of the occurrence of conduct that gives rise to consideration of removal of a student who is believed to be a qualified individual with a disability under Section 504 for more than 10 cumulative school days in a school year, and the removals constitute a change in placement as defined in Rule 2360.2(d)(1), a Section 504 evaluation shall be completed prior to imposition of the removal.
 - (a) If the evaluation results in a determination that the student is a qualified individual with a disability under Section 504, the discipline procedures in this rule shall be followed.
 - (b) If the evaluation results in a determination that the student is not a qualified individual with a disability under Section 504, the discipline procedures in Rule 4311 shall be followed.

- (7) If a child who is a qualified individual under Section 504 possesses or carries a weapon, as defined in Rule 4313.9(a), to school or at a school function, he or she may be placed in an interim alternative educational setting (IAES) in accordance with the procedures set forth in Rule 4313.9 and Rule 1253. The student's 504 team shall determine the IAES, and the services provided in the IAES, in accordance with the procedures set forth in Rule 4313.9. It is the intent of this section to discipline a child who is a qualified individual under Section 504 in the same manner as students who are eligible for special education when they possess weapons at school or at school functions.
- (8) When a parent disagrees with disciplinary action taken by a school district, the parent may request an impartial due process hearing, and the procedures in Rules 2365.1.6(c) through 2365.1.9 shall apply. In addition to or in lieu of a due process hearing a parent may file a complaint with the U.S. Department of Education Office for Civil Rights.
- (9) A hearing officer may order a change in the placement of a child who is a qualified individual under Section 504 to an appropriate IAES for not more than 45 calendar days, if the hearing officer, in an expedited due process hearing:
 - (a) Determines that the school district has demonstrated by substantial evidence, which for purposes of this section shall mean a preponderance of the evidence, that maintaining the current placement of the child is substantially likely to result in injury to the child or others;
 - (b) Considers the appropriateness of the child's current placement;
 - (c) Considers whether the school district has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
 - (d) Determines that the IAES that is proposed by school personnel will enable the child to continue to progress in the general curriculum. The services provided to and modifications made for the child in the IAES shall be designed to address and prevent the child's offending behavior.
- (10) This Rule (4312) shall not apply when a responsible agency takes disciplinary action against a Section 504 student if:
 - (a) The misconduct for which the student is being disciplined pertains to the use or possession of illegal drugs or alcohol at school or at a school function; and
 - (b) The student is currently engaging in the use of alcohol or illegal drugs.

In this instance, the Section 504 student shall be disciplined in accordance with Rule 4311.

4313 Discipline Procedures for Students Eligible for Special Education Services

In addition to the general disciplinary procedures found within Rule 4300, the following procedures apply to children eligible for special education services:

4313.1 Authority of School Personnel.

- (a) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.
- (b) General.
 - (1) Under this section, the school principal/designee, in consultation with the special education case manager may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under Rule 4313.7).
 - (2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the school district must provide services to the extent required under paragraph (d) of this section.
- (c) Additional authority. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel in consultation with the special education administrator may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.
- (d) Services.
 - (1) Except as provided in paragraphs (d)(3) and (d)(4) of this section, a child with a disability who is removed from the child's current placement pursuant to paragraphs (b), (c), or (g) of this section must--
 - (i) Continue to receive educational services, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
 - (ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, which are designed to address the behavior violation so that it does not recur.

- (2) The services required by paragraph (d)(1) of this section may be provided in an interim alternative educational setting.
 - (3) A school district need not provide services during periods of removal under paragraph (b) of this section to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if services are not provided to a child without disabilities who has been similarly removed.
 - (4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under Rule 4313.7, school personnel, in consultation with the child's special education case manager, determine the extent to which services are needed under paragraph (d)(1) of this section, if any, and the location in which services, if any, will be provided.
 - (5) If the removal is for more than 10 consecutive school days or is a change of placement under Rule 4313.7, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section and the location in which services will be provided.
- (e) Manifestation determination
- (1) Except for removals that will be for not more than 10 consecutive school days and will not constitute a change of placement under Rule 4313.7, within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--
 - (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
 - (ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.
 - (2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.
- (f) Determination that behavior was a manifestation. If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must--
- (1) Either-
 - (i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

- (ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and
- (2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.
- (g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child--
 - (1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;
 - (2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or
 - (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.
- (h) Notification. Not later than the date on which the decision to take disciplinary action is made, the LEA must notify the parents of that decision, and provide the parents a copy of their Parents' Rights in Special Education.
- (i) Definitions. For purposes of this section, the following definitions apply:
 - (1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c), as amended).
 - (2) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.
 - (3) Serious bodily injury has the meaning given the term "serious bodily injury" under Section 1365(h)(3)(A – D) of Title 18, United States Code, as amended.
 - (4) Weapon has the meaning given the term "dangerous weapon" under of Section 930(g)(2) of Title 18, United States Code, as amended.

4313.2 Determination of Setting.

The interim alternative educational setting referred to in Rule 4313.1(c) and (g) is determined by the IEP Team.

4313.3 Appeal.

- (a) General. The parent of a child with a disability who disagrees with any decision regarding placement under Rules 4313.1 and 4313.2, or the manifestation determination under Rule 4313.1(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may request a hearing.
- (b) Authority of hearing officer.
 - (1) A hearing officer in an impartial due process hearing hears, and makes a determination regarding, an appeal requested under paragraph (a) of this section.
 - (2) In making the determination under paragraph (b)(1) of this section, the hearing officer may--
 - (i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of Rule 4313.1 or that the child's behavior was a manifestation of the child's disability; or
 - (ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.
 - (3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes the child would be dangerous if returned to the original placement.
- (c) Expedited hearing.
 - (1) Whenever a hearing is requested under paragraph (a) of this section, the procedures of Rule 2365.1.6.17 shall be followed and the parents and LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of the rules relating to Resolution Sessions and Impartial Due Process Hearings, except as provided in paragraph (c)(2) through (5) of this section.
 - (2) The school district must arrange for an expedited hearing, which must occur within 20 school days of the date the hearing is requested and must result in a determination within 10 school days after the hearing.
 - (3) Except as provided in a written waiver of the resolution session or in an agreement to mediate
 - (i) A resolution session meeting must occur within seven days of the date the hearing is requested, and
 - (ii) The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receipt of the hearing request.
 - (4) The decisions on expedited due process hearings are appealable consistent with those rules associated with due process hearing appeals.

4313.4 Placement During Appeals.

When an appeal under Rule 4313.3 has been requested by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in Rule 4313.1(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

4313.5 Protections for Children not yet Eligible for Special Education and Related Services.

- (a) General. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the LEA had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.
- (b) Basis of knowledge. An LEA must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred--
 - (1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
 - (2) The parent of the child requested an evaluation of the child pursuant to the rules relating to Procedures for Evaluation and Determination of Eligibility; or
 - (3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency in accordance with the agency's established child find or special education referral system.
- (c) Exception. A school district would not be deemed to have knowledge under paragraph (b) of this section and the student would not receive special education protections available only to students with a disability or suspected of having a disability, if:
 - (1) The parent of the child:
 - (i) Has not allowed an evaluation of the child pursuant to special education evaluation procedures ; or
 - (ii) Has refused services under this part; or
 - (2) The child has been evaluated and determined not to be a child eligible for special education.
- (d) Conditions that apply if no basis of knowledge.
 - (1) If an LEA does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking

disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph (d)(2) of this section.

- (2) (i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under Rule 4313.1, the evaluation must be conducted in an expedited manner.
- (ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.
- (iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the requirements of Rules 4313.1 through 4313.7 and Section 1412(a)(1)(A) of the Individuals with Disabilities Education Improvement Act, as amended.

4313.6 Referral to and Action by Law Enforcement and Judicial Authorities.

- (a) Rule of construction. Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.
- (b) Transmittal of records.
 - (1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.
 - (2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

4313.7 Change of Placement because of Disciplinary Removals.

For purposes of removals of a child with a disability from the child's current educational placement under Rules 4313.1 through 4313.4, a change of placement occurs if:

- (a) The removal is for more than 10 consecutive school days; or
- (b) The child has been subjected to a series of removals that constitute a pattern--
 - (1) Because the series of removals total more than 10 school days in a school year;
 - (2) Because the child's behavior is substantially similar to the child's behavior in the incidents that resulted in the series of removals, taken cumulatively, is determined, under Rule 4313.1(f), to have been a manifestation of the child's disability; and

- (3) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

4400 HOME STUDY STUDENTS

4400 Integration of Home Study Students

4401 Statutory Authority: Section 1(c) of Act 119 of 1998; 16 VSA §563(24)

4402 Definitions

“Facilities” means the portions of a school building and grounds used by students for classes, study and co-curricular or extracurricular activities.

“Home study student” means a student enrolled in a registered home study program pursuant to 16 VSA §166b.

“Integrated course” means a course covering two or more subjects that are taught in a unified manner by one teacher or team where the subjects cannot be separated into discrete sections for purposes of student attendance.

4403 Part-time Enrollment of Home Study Students in Public School Academic Programs

4403.1 A home study student shall be eligible to enroll as a part-time student in a school operated by his or her district of residence or, if the district does not operate a school, in a public school for which his or her district of residence is required to pay tuition.

4403.2 Each school board shall adopt, by July 1, 1999, policies and procedures to ensure that home study students who request part-time enrollment are accepted into those courses or programs, and are furnished with required learning materials, on the same basis as full-time students.

4403.3 Policies and procedures adopted under this rule shall:

- (a) upon inquiry by a home study student or parent, require the provision by the district of the student’s residence of information concerning the availability of part-time enrollment in school. Such information shall include procedures, including registration deadlines, that home study students must follow to enroll on a part-time basis in the schools operated by the home study student’s district of residence. In the event the district of residence does not operate a school in the grades appropriate to the inquiring student, the student or parents shall be given information on how to contact neighboring school districts that accept tuition students from the district of residence.

- (b) apply the same enrollment procedures and deadlines to home study students that apply to full-time students.
- (c) specify any enrollment capacity limits that the school board will apply to particular academic courses or grade levels. Capacity limits shall apply equally to home study and full-time students.
- (d) establish criteria to determine whether home study students are eligible to enroll in integrated courses and courses that are available only to students who fulfill prerequisites. Criteria applied to courses with prerequisites shall be applied equally to home study and full-time students. Reasonable indications that academic criteria have been met, including results from achievement tests or other indications of adequate preparation, may be required of home study students, so long as those students are required to meet the same prerequisite standards as full-time students.
- (e) establish informal and expeditious processes to appeal denials of requests for part-time enrollment to administrators and/or the school board.

4404 Participation of Home Study Students in Public School Co-curricular and Extra-curricular Activities.

4404.1 A home study student shall be eligible to participate in or, when selection to participate in an activity is made on a competitive basis, to try out for, one or more co-curricular or extra-curricular activities at a school operated by his or her district of residence or, if the district does not operate a school, at a public school for which his or her district is required to pay tuition. This rule is not intended to confer a right upon any student to participate in any activity. Although a home student need not enroll in academic programs to participate in activities under this rule, he or she must show compliance with insurance, physical examination, age, transfer and other requirements of the Vermont Principals Association on the same basis as enrolled students.

4404.2 Each school board shall adopt, by July 1, 1999, policies and procedures to ensure that home study students who wish to participate in co-curricular or extra-curricular activities are accepted into those activities without first being required to enroll as part-time students at the sponsoring school.

4404.3 Policies and procedures adopted under this rule shall:

- (a) upon inquiry by a home study student or parent, require the provision by the district of the student's residence of information

concerning the eligibility of home study students to participate in co-curricular or extra-curricular activities. Such information shall include procedures, including registration deadlines, that home study students must follow to participate in activities at schools operated by the home study student's district of residence. In the event the district or residence does not operate a school in the grades appropriate to the inquiring student, the student or parents shall be given information on how to contact neighboring school districts that accept tuition students from the district of residence.

- (b) apply the same activity registration deadlines to home study students that apply to full-time students.
- (c) apply the same academic eligibility requirements to home study students that apply to full-time students. Policies may require the parents of home study students to provide assurances that the school's academic eligibility standards are being met. Such assurances may be required at the same intervals during the year as is required of full-time students. A home study parent's assurance that the student meets the district's academic standards, provided at the intervals required by the school, shall be sufficient to satisfy academic eligibility requirements.
- (d) establish priorities and criteria for admitting students to particular activities. When space is limited in a particular activity, preference may be given to enrolled students as long as the reporting requirement in §4404.4 of these rules is met. Procedures for admitting home study students to activities with limited spaces may include lotteries, first-come first-served waiting lists and performance-based criteria for participation on sports teams or in activities.
- (e) policies adopted in compliance with this rule shall establish informal and expeditious procedures to appeal denials of requests to participate in activities to administrators and/or the school board.

4404.4 When a home study student's request to participate in an activity is denied on the grounds that space is not available and that preference is given to full-time students, the school shall, within 30 days of the denial, notify the Home Study Consultant at the Department of Education on a form provided by the Department.

4405 Use of School Facilities by Home Study Students

4405.1 A home study student may use facilities at a school operated by his or her district of residence or, if the district does not operate a school, at a public school for which his or her district is required to pay tuition.

4405.2 Each school board shall adopt, by July 1, 1999, policies and procedures to ensure that home study students are allowed to use school facilities on the same basis as full-time students.

4405.3 Policies and procedures adopted under this rule shall:

- (a) apply to home study students the same criteria, procedures and deadlines for requesting the use of school facilities as are applied to full-time students.
- (b) upon inquiry by a home study student or parent, require the provision by the district of the student's residence of information concerning the use of school facilities operated by the district. In the event the district does not operate a school in the grades appropriate to the inquiring student, the student or parents shall be given information on how to contact neighboring school districts which accept tuition students from the district of residence.
- (c) provide for the establishment of criteria to determine whether sufficient space is available to comply with specific requests for facilities use. Criteria may also be developed to establish fees, to be applied equally to home study and full-time students, for security, janitorial or other services not normally available at the time of the requested use.

6000 SCHOOL BUILDINGS AND SITES

5/1/08

6001 State Board of Education Rule #6001 School Bus Idling

6002 Statutory Authority: 23 V.S.A. § 1282(f)

6003 Statement of Purpose

It is the purpose of these rules to implement 23 V.S.A. §1282(f) by providing for the limited idling of school buses in specific circumstances.

6004 Definitions

The following definitions shall apply to these rules:

- a. “School Bus” includes all vehicles operated by or for the district for the purpose of transporting the district’s students to or from school or school-related activities, whether the vehicles are owned by the district or contracted from vendors.
- b. “School grounds” includes any area adjacent to school buildings and used at any time for school-related activities, including parking lots, playing fields, and driveways.
- c. “Idling” means the primary propulsion engine is running while the vehicle is stationary.

6005 Provisions

The district shall communicate this rule to all parents, drivers, and staff. The provisions of this rule shall be incorporated into transportation contracts and agreements.

The employer of a school bus driver shall ensure that the driver is informed of the rule and any related district policy, and that all complaints of non-compliance are reviewed and that appropriate corrective actions are taken.

The operator of a school bus:

- a. shall turn off the primary propulsion engine immediately upon arrival at student loading or unloading areas on school grounds, and shall not restart the engine until the bus is loaded or unloaded and is ready to depart; and
- b. shall not otherwise idle the bus engine for more than five (5) minutes in a sixty (60) minute period on school grounds.

The provisions of this rule shall not apply under the following conditions:

1. when the engine is required to operate special equipment for disabled persons;
2. when the engine is required to operate safety equipment other than lighting systems, such as windshield defrosters, and the operation of the equipment is necessary at that time to address specific safety, traffic, health, or emergency concerns; and
3. when the vehicle is being serviced and the operation of the engine is essential to the service being performed.

6100 BUILDING PROJECTS ELIGIBLE FOR STATE AID

6110 Statutory Authority: 16 V.S.A. Chapter 123

6111 Policy and Purpose

- (a) It is the policy of the State of Vermont to encourage renovation of, additions to, or construction of school facilities where necessary to meet the educational needs of Vermont pupils. Any such projects should be developed with standards of quality for public schools set forth in 16 V.S.A. §165 in mind and in a cost and energy efficient manner. Further it is the policy of the State Board to encourage the use of existing infrastructure to meet the needs of Vermont students in accordance with the State Board policy on historic preservation. Joint construction projects between two or more school districts and consolidation of buildings within a district where feasible and educationally appropriate are also encouraged. The State Board, in favor of local objectives to better the learning environment, shall liberally construe these rules. These rules are intended to establish the extent to which a proposed project is eligible to receive state construction aid, but shall in no way limit the amount of construction that a local district may authorize or expend on a project.
- (b) It is the purpose of these rules to provide the procedures and standards for school districts applying for school construction aid. In order for the State Board of Education to approve a construction aid project, it must comply with the applicable provisions of Rules 6100 et seq. Approval of the project may be for the whole of the project or only for such component parts as found by the State Board of Education to meet the requirements set forth herein.

6112 Definitions

“Commissioner” shall mean the Commissioner of Education, or his or her designee unless the context clearly requires otherwise.

"Construction aid project" means construction of a school building, renovation or alteration of an existing school building or purchase of a school building for which a school board may seek a grant of financial aid pursuant to 16 V.S.A. §3448. A construction aid project may include the purchase and installation of relocatable units, provided such units meet the minimum standards applicable to permanently constructed educational spaces.

“School”, “school district”, or “school board” where the context allows shall in addition to their ordinary meaning include an independent school or board of trustees as identified in 16 V.S.A. §3447.

6113 School Building Information

The Commissioner from time to time shall publish information to help school officials maintain school buildings in safe and sound condition; achieve effective design, flexibility and economy in a construction aid project; and secure expeditious approval of grants for construction aid projects.

6114 Requirements Applicable To All Projects

6114.1 Regulations of Other Agencies

- (a) These rules are in addition to the requirements of other state agencies with respect to school construction. In order to be eligible for construction aid, school building projects must meet standards that apply to school construction adopted by the Department of Labor and Industry, the Agency of Natural Resources, the Division for Historic Preservation, the Department of Health, the Department of Agriculture, the Agency of Transportation, and any standards of other state or federal agencies and local or regional planning authorities.
- (b) The Commissioner shall, subject to the consent of the agencies involved, coordinate the preliminary approval processes for public schools for all agencies of state government with responsibilities relating to school buildings and sites. However, the school district shall be

responsible for securing all necessary permits or approvals from these agencies.

6114.2 Site Requirements

Before final approval the school board shall request and the Commissioner shall grant site approval if the site meets the approval of other applicable agencies and is adequate for: 1) the educational programs the school board plans to conduct now and in the future as reflected in the approved educational specifications; 2) the anticipated community uses of the school facilities; 3) the space needed for the planned construction and its necessary service areas; and 4) the growth potential of the district. All construction and site development to be included in a construction aid project must occur on land to which the school district has clear title in fee simple or a permanent deeded easement or right-of-way. Land not owned by the district but convenient to the site on which a construction aid project will occur may be considered as part of the school site when the Commissioner finds that the land is suitable for daily school use and the school has permanent unrestricted access.

Any site considered by a school board shall have the capacity for a water supply system and sewage disposal system sufficient to meet the needs for the planned occupancy of the building as determined by the approved educational specifications.

The school board shall evaluate air quality issues and environmental hazards when selecting a site for a new school or addition so as to avoid or minimize the potential for contaminants and submit the analysis with the application for construction aid.

6114.3 Accessibility Standards

School construction shall comply with all state and federal laws regarding access rights to public buildings for persons with disabilities. These include the requirements of 21 V.S.A. §271-277, Section 504 of the Rehabilitation Act of 1973 and any regulations promulgated in connection therewith.

6114.4 Bond Amortization

School boards issuing bonds for capital construction shall repay the principal in not more than twenty years except as provided by 16 VSA §777.

6115 Application Procedures for Construction Aid

- 6115.1 The application procedures for construction aid shall consist of two parts: the preliminary application and a final application. Both applications shall be made on forms prescribed by the Commissioner.
- 6115.2 Each school district which has voted funds or issued bonds for the total cost to either construct or purchase a new school, or make extensive additions or alterations to its existing school plant to adequately house its pupils, or to conserve energy, can make application in writing to the State Board of Education for construction aid.

6116 Preliminary Application

- 6116.1 The Commissioner may approve a preliminary application if he or she finds that the project or any part thereof fulfills a need which cannot reasonably be met by another means and that is occasioned by:
- (a) facilities which are inadequate to provide programs required by state or federal rule or regulation;
 - (b) deterioration of existing buildings;
 - (c) conditions which are unsafe or threaten the health of students or employees;
 - (d) excessive energy use or cost resulting from the design characteristics of the building.
- 6116.2 A school board shall supply evidence with its preliminary application that it has conducted a facility analysis consistent with these rules and considered the availability of classrooms or other accommodations in neighboring schools as a reasonable means of meeting the urgent need on which its application is based.

6117 Facility Analysis

A facility analysis means a complete analysis of the existing facility. The analysis shall identify the areas of deficiency consistent with the criteria listed in 16 V.S.A. §3448(a)(2)(A). The analysis shall include, as appropriate for the project, the following information:

- (a) demographic data and enrollment projections,
- (b) the current floor plan and useable square footage,
- (c) economic impact on the community, condition of the infrastructure of the existing building, including existing health and safety conditions, and
- (d) history of maintenance on the existing facility.

6118 Determining a Priority of Projects

Upon receipt of a preliminary application, the Commissioner will evaluate and rate the degree of need for construction in accordance with the *System for Rating Proposed School Construction Projects* adopted by the State Board of Education.

6119 Rating Eligible Projects:

- 6119.1 The State Board shall adopt and from time to time update a document entitled *System for Rating Proposed Capital Construction Projects* in order to determine the priorities for construction aid.
- 6119.2 The rating system for prioritizing proposed capital construction projects shall require consideration of projects according to objective criteria and a review of data submitted by school districts. The rating system shall include consideration of the following factors:
- (a) type of space requested;
 - (b) current space availability;
 - (c) current health and safety status;
 - (d) physical condition of the facility;
 - (e) impacts of maintenance on condition of facilities;
 - (f) short and long-range enrollment projections; and
 - (g) consolidation or union district formation
- 6119.3 The Commissioner shall notify in writing each district of its rating. A school district within 30 days of notification may appeal its rating in writing to the State Board of Education. The State Board of Education, after offering the school district the opportunity for a hearing, may affirm the rating of the Commissioner or, if there is substantial evidence to justify it, modify the rating accordingly.

6120 Preliminary Design Work and Cost Estimates

Upon notification of its rating status, a school district may submit to the Commissioner preliminary design work and a cost estimate for the proposed project.

6121 Educational Specifications

Plans and specifications for all construction aid projects for new school buildings, and alterations or additions to an existing school buildings shall be based on educational specifications approved by the Commissioner. The educational specifications shall incorporate the results of the facilities analysis required by Rule 6117 and enrollment projections for not less than five nor more than ten years beyond the anticipated completion of the work. Based on the results of the facilities analysis, the educational specifications shall provide information on each type of space and outdoor area to be included in the facilities of the school.

6122 Enrollment Projections

Enrollment projections to be incorporated in educational specifications for a construction aid project shall be based on and include: 1) a ten year history of enrollment by grade level of resident and tuition pupils within the district; 2) when available, live birth data for the district and other districts from which it regularly receives and will continue to receive tuition pupils, and 3) enrollment projections for not less than five nor more than ten years beyond the anticipated completion to the work.

6123 Construction Design

Plans and specifications for a construction aid project shall be prepared by a registered architect. Unless otherwise approved by the Commissioner and subject to state licensing requirements, plans for construction projects which do not impact or alter instructional areas shall be prepared by a registered architect or a registered professional engineer.

When appropriate, the Department of Education may request a review by the Department of Aging and Disabilities to assess the architectural accessibility of a proposed project.

6124 The Maximum Cost for State Participation

6124.1 The State Board of Education shall adopt and update annually a document entitled *Capital Outlay Financing Formula*. The capital outlay formula shall establish the maximum and minimum square footage parameters by school size, and grade range through a square footage allowance per student or program. The formula shall also establish an allowable cost per square foot of construction.

- 6124.2 The Commissioner shall determine the maximum eligible cost for construction aid for the proposed project using the information provided by the district and applying the Capital Outlay Formula. The cost and space parameters shall be fixed at the time the State Board approves the final application.

6125 Assigning a Priority to Projects

After all appeals under rule 6119.3 have been concluded, but in no case later than December 1 of each calendar year, the State Board of Education shall list in priority order those projects that have received preliminary approval from the Commissioner and voter approval. The State Board shall approve the priority order of projects at its December meeting. The order of priority shall be as follows:

1. The State Board shall assign first priority to emergency projects which address threats to the health and safety of students and staff.
2. The Board shall assign second priority to voter approved construction projects in excess of \$10,000 which extend the useful life of the building but which do not make extensive additions or alterations to existing facilities to house or educate pupils.
3. All other voter approved projects shall receive a priority based on consideration of the relative degree of need as determined by *The System for Rating Proposed School Construction Projects* and 16 VSA § 3448(a)(2)(A) and (B).
4. By January 15th of the following year, the State Board of Education shall present the house and senate institutions committees with a list of projects in priority order with the estimated cost of each project.

6126 Approval of Final Application

6126.1 The State Board may approve the final application for a project that has:

- (a) received preliminary approval from the Commissioner;
- (b) received approval from the voters of the district for the total cost of the project either through the authorization of a bond or other funds;
- (c) made arrangements for project construction supervision by persons competent in building trades;

- (d) provided for financing of the construction project during a period prescribed by the State Board; and
- (e) otherwise met the requirements of sections 3447-3456 of Title 16 and these rules.

6126.2 In order to be eligible for construction aid, no construction shall begin before the State Board of Education approves the final application

6127 Final Application

A school district seeking construction shall file a final application on a form prescribed by the Commissioner that provides evidence of the following:

1. Approval of a preliminary application consistent with rule 6116.
2. A review by the Agency of Natural Resources of the water supply and sewage disposal conditions at the existing site that the board is considering.
3. Approval of the educational specifications by the Commissioner of Education
4. Completion of the preliminary design work for the project by a registered architect or engineer as appropriate
5. A determination of the maximum eligible cost for state capital construction aid by the Department of Education for the proposed project
6. A successful vote consistent with Title 24 V.S.A. §1758(b) for financing 100% of the cost of the project.
7. Financing of the project and a system of cost accounting for the project separate from the accounting system for the district.
8. Final plans. The school shall submit to the Commissioner copies of the construction plans either in computer aided design (CAD) format, if used, or, if not, in the form submitted by the architect or engineer to the school board or board of trustees.
9. Compliance with public bidding procedures consistent with 16 V.S.A. §559 and Rules 6300-6400.

10. Employ a clerk-of-the-works to oversee the completion of the project. The clerk-of-the-works may not be a current employee or, without the approval of the Commissioner, a former employee of the district, or the contractor, construction manager, architect or engineer for the project.
11. Adequate builder's risk insurance and professional liability insurance.
12. Unless otherwise permitted by the Commissioner, a performance bond or irrevocable letter of credit equal to or exceeding the amount of the construction contract for the project covering the contractor or construction manager.
13. Approval from any governmental agency or authority with rules that affect school construction and from which approval is required.
14. Other information deemed necessary by the State Board for the type of construction aid project.

6128 Commencing Construction

When the Department of Education has received a completed application and all necessary exhibits as required, the Commissioner shall notify the school board and give authorization to commence construction pending approval of the application by the State Board at its next meeting

6129 Emergency Aid Approval

- 6129.1 A school board seeking emergency aid under this section shall make application on a form prescribed by the Commissioner. The application shall contain:
- (a) information on how the project will be funded;
 - (b)
 - (i) a detailed description of the nature and extent of the imminent health and safety hazards that exist, and the extent they would be alleviated by the project, and
 - (ii) certification by an independent and qualified authority that an imminent health and safety

hazard exists to the building's occupants unless the emergency work is completed; and

- (c) the estimated cost of the emergency construction with documentation where feasible by two or more independent qualified cost estimators;

6129.2 Upon determination that such emergency exists and can be corrected in a manner consistent with the construction proposed in the application, the Commissioner may award such funds as are permitted under 16 V.S.A. §3448(d).

6130 During Construction

A set of the approved plans and specifications shall be kept at the construction site throughout construction. Changes from the approved plans or specifications for a construction aid project relating to any state requirements, shall not be incorporated into the project without prior approval of the appropriate state agencies which have approved the plans and specifications.

All change orders during construction that increase or decrease the scope of the project as approved by the State Board of Education shall be submitted to the Commissioner. The Commissioner may approve all or a portion of the change orders for eligibility for school construction aid.

6131 Indoor Air Quality

The school board shall adopt a plan which addresses indoor air quality during all phases of construction. This may include, but is not limited to, temporary modifications to the existing ventilation system and provisions for the containment and proper exhaust of job-site pollutants, including dust, and volatile organic compounds (VOC's). Wherever practicable, the plans shall specify a minimum of one week following the completion of construction before occupancy to allow off-gassing. The plans and specifications shall also provide for commissioning of the ventilation system in accordance with the requirements of Rule 6143.4 herein.

6132 Completion of Construction:

Upon completion of a project the builder shall furnish to the school board a full set of plans and specifications for the project as built.

6133 Awarding of Construction Aid

6133.1 First Award

Upon satisfactory evidence that a project approved under these rules is under construction and upon appropriation by the general assembly of funds sufficient to fund the state aid due under Title 16 VSA §3448, the State Board shall certify an award for the project to the commissioner of finance and management who shall issue a warrant for the payment of one-half of the award. If no funds were available for a first award and if the approved project has been completed, the State Board shall certify an entire award upon completion of an inspection as outlined below and a final audit of expenditures.

6133.2 Final Award

In order for the school district to receive its final award, the school board shall:

1. Notify the Commissioner in writing when the project is completed and request a final state agency inspection of the work. The following or their designees shall be present at the final inspection: architect, superintendent, general contractor, a member of the school board and clerk-of-the-works.
2. Notify the Commissioner when all changes and additions listed at the final inspection have been made and the project is complete.
3. Submit a final Heating Ventilation and Air Conditioning (HVAC) Commissioning report certifying compliance with minimum requirements specified in Rule 6143.4 and with all other provisions of the HVAC commissioning plan for the project.
4. Notify the Commissioner that the project is ready for audit when canceled checks and invoices for all project costs are returned.

6134 Costs Eligible for Construction Aid

1. Emergency projects costs required to address imminent threats to safety and health of students or employees for which construction is necessary

2. Fees for permits, clerk-of-the-works, legal, architectural and engineering services
3. Razing existing on-site structures
4. Installation of utilities and associated costs either on-site or where legal right-of-way is obtained by the school district, including grading, drainage facilities, power plants, sewer, water, wells and pumps, waste treatment, electricity, roads, walks, parking areas and lighting
5. Athletic fields and other site development projects necessary to provide exterior facilities to carry out an approved educational program
6. Landscaping incidental to the construction
7. Construction to meet state agency regulations, including but not limited to fire and safety, environmental, and VOSHA
8. Roof replacement if:
 - (a) it is a structural improvement which will extend the life of the building, or
 - (b) the roof has exceeded its life expectancy and will be completely replaced and upgraded
9. School building construction or purchase, and extensive additions, alterations and renovations to existing schools consistent with 16 V.S.A. §3448(a)(2)(A)
10. Fixed equipment approved by the Commissioner

6135 Partially Eligible Costs

1. Swimming pools, skating rinks, theaters, and other structures with valid education functions but primarily programmed for community use and/or revenue production are to be counted into the total space allowances eligible for construction aid at a percentage which is the ratio of educational use to total use; such percentage to be determined in each case by the Commissioner. Auxiliary spaces, such as locker rooms, changing rooms, spectator areas and mechanical equipment areas may be included as partially eligible costs.
2. School construction on land or buildings which are part of a permanent deeded easement or right-of-way is eligible for state participation as a partially eligible cost at a percentage to be determined by the Commissioner.

6136 Non-eligible Costs

1. Structures or spaces designed exclusively for use of other agencies or services such as community centers, town offices, or civil defense shelters
2. Repair or maintenance projects that do not amount to extensive additions, alterations or renovations
3. Stadiums
4. School furniture, computers, computer hardware, cleaning equipment and supplies
5. Interest on bonding or short term borrowing
6. Time spent on the construction project by school board members or employees of the district
7. Deferred Maintenance. No state construction aid shall be available for any proposed project which has arisen in whole or in part from significant deferred maintenance. For the purpose of this section, “deferred maintenance” means the lack of reasonable and timely maintenance including periodic minor repairs of school buildings and mechanical systems.
8. Office space for supervisory union personnel, including but not limited to, space for the superintendents of schools, business managers, special education coordinators, curriculum coordinators or their staff.
9. All costs associated with land acquisition.

6137 Questionable Costs of Spaces

1. Costs or spaces not falling clearly within the list of eligible or partially eligible costs or spaces and not specifically excluded as non-eligible shall be submitted to the Commissioner for status determination prior to project commencement, or shall automatically be considered as not eligible for construction aid.
2. Districts aggrieved by the decision of the Commissioner regarding eligible costs may appeal to the State Board of Education. The State Board after opportunity for hearing may affirm, modify or reverse the decision of the Commissioner.

6138 Minimum Requirements

If one or more of the items set forth in Rule 6139 are included in the proposed construction aid project, the minimum requirements set forth therein shall apply by grade range for program and service areas as outlined in the capital outlay formula. All student counts are calculated on the basis of the approved enrollment projection for the intended use of the space as set forth in the educational specifications unless otherwise indicated.

6139 Minimum Requirements and Specific Program Space Needs

- 6139.1 General purpose classrooms: Classrooms shall be suited to the teaching strategies employed. There shall be effective acoustical separation between teaching stations so that learning activities in one area do not distract from learning activities in another. Storage spaces shall be provided and appropriately designed for their intended purposes. The ceiling height shall be 8 feet except where other wise required for the intended use of the room. Ceiling height shall be measured from the floor to the lowest projection from the ceiling, not including instructional apparatus.
- 6139.2 Kindergarten/early education: Classrooms shall include space for large and small group work; for gross-motor physical activity; for activity with learning materials; for quiet reading; and for accessible storage of learning materials.
- 6139.3 .Early Education: Rooms for education of children prior to legal school age may be incorporated in a construction aid project and must be aligned with the Early Childhood Program Regulations established by the Child Care Division of the Agency of Human Services' Social and Rehabilitation Services.
- 6139.4 Visual art rooms, combined art and music rooms:
Work space including teacher preparation space with directly accessible storage shall be provided for the school's curricula in the arts. If flammable materials are used, the space shall be furnished with a fire extinguisher, a fire blanket, and separately vented storage. If the preparation space is used for any activity which may cause the production of hazardous vapors, it shall be furnished with a mechanical system for exhausting such vapors directly to atmosphere.
- 6139.5 Technology Education and Family and Consumer Sciences:
Instructional and storage spaces shall be appropriately designed for their intended purposes as determined by the school's curricula.

- 6139.6 Libraries: There shall be sufficient space for furniture for circulation materials and catalogues, and spaces for audiovisual use and small group work. There shall be access to telephone, work space and clean up facilities and storage of library supplies.
- 6139.7 Gymnasium: For middle or junior high school, floor space shall be a minimum of 42 ft. x 74 ft. For high schools, floor space shall be a minimum of 50 ft. x 84 ft. In addition, at least 3 feet of unobstructed space outside the boundaries of the designated activity area shall be provided. In new construction a separate and directly accessible storeroom shall be provided for physical education equipment and other portable furnishings used. The ceiling height shall be determined by the activities described in the educational specifications. Minimum ceiling height for a gymnasium shall be 22 feet.
- 6139.8 Science laboratories: There shall be a sufficient number of classrooms to support the described program of studies each with learning stations equaling the number of students intended to occupy these spaces. Learning stations shall include gas, water and electricity as required by the curriculum. The space shall include facilities to wash chemical spills from the eyes and body, lockable storage and display space, and a separate vented chemical storage area.
- 6139.9 Project Rooms or Small Group Activity Rooms:
Such rooms shall be appropriate for the anticipated activities and conveniently located to the larger instructional areas. There shall be effective acoustical separation, and appropriate storage areas.
- 6139.10 Computer Labs: The number of computer stations shall be sufficient to accommodate the anticipated class size. There shall be adequate lighting, ventilation and storage areas.
- 6139.11 Multipurpose Rooms: Accessible storage areas shall be provided for all programs using the space for instructional purposes, and acoustical separation shall be provided from other teaching stations or classrooms. The ceiling height for a multi-purpose room shall be 12 feet.
- 6139.12 Maintenance and Janitorial Storage: Appropriate accessible space for storage of supplies and materials shall be provided as well as clean up facilities with availability of hot water.

- 6139.13 Special Services: Resource rooms and individual instructional areas shall be provided with appropriate ventilation, lighting and acoustic separation.
- 6139.14 Places of Assembly: Any room to be used for assembly purposes or larger group meetings shall be provided with appropriate acoustics so that speech may be heard clearly throughout the room.
- 6139.15 Food Service
 - 6139.15.1 Kitchen space for the preparation of meals for on site production only shall include areas for food preparation, serving, dishwashing, receiving and storage as determined for the intended use of the space. The kitchen area shall include appropriate space for storage of brooms and cleaning supplies as well as a separate area for the staff to use for clean up.
 - 6139.15.2 Storage space intended for storage of perishable items not requiring refrigeration shall be designed so that the temperature within the space will not be heated above 60 degrees Fahrenheit or fall below freezing at any time.

6140 Lighting

In all classrooms or other areas where instruction routinely takes place, the artificial illumination installed as part of a school construction project shall be capable of providing work surfaces with at least 50 foot candles of light, without significant glare, except where the intended use of the area requires a higher level of illumination. Illumination guidelines for special applications or other areas shall be as described by Ninth Edition Illuminating Engineering Society of North America Lighting Handbook.

6141 Toilets, Hand Washing Facilities and Drinking Fountains

Installation of toilets, hand washing facilities and drinking fountains as part of a school construction project shall comply with the rules adopted by the Plumbers Examining Board in accordance with 26 V.S.A. § 2173, and requirements of the Department of Labor and Industry. Public toilets shall be provided in any part of the building to be used by the public.

6142 Energy Efficiency Standard

Equipment, design, and performance aspects of the proposed construction or improvement and all related systems shall meet or exceed the American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE) Standard ASHRAE/IES 90.1-1989; Energy Efficient Design of New Buildings.

6143 Ventilation

6143.1 Ventilation design for all new schools and additions for which construction aid is sought, including modular or relocatable units, shall comply with minimum standards specified in ASHRAE 62-1989.

In addition, ASHRAE 62-1989 shall apply to any renovations of existing building in which the airflow is being altered as a result of:

- (a) a new heating system or new heating plant;
- (b) new HVAC controls;
- (c) substantial reconfiguration of interior partitions; or
- (d) treatment of any portion of an existing ventilation system, including but not limited to replacement, or upgrades.

6143.2 Where required under Rule 6143 compliance with ASHRAE 62-1989 shall be required throughout all renovated sections of the school, in addition to any other sections where the ventilation system is affected directly or indirectly by components located within the renovated area.

6143.3 Project specifications for all new construction, additions, or renovations shall include a building commissioning plan. At a minimum, the building commissioning plan shall identify a process for verifying the performance of the new or modified HVAC system(s) in accordance with approved project specifications.

6143.4 The HVAC commissioning plan shall clearly specify the procedure for verification of system performance, and shall require certification by a registered engineer.

HVAC commissioning shall include but not be limited to comprehensive testing of the equipment and controls in all operating modes. An air balance report shall be prepared by a

qualified professional, and shall be utilized by the commissioning agent in assessing system performance. Prior to the release of state funds, the school board shall submit to the Commissioner a final HVAC commissioning report, certifying that all HVAC equipment and controls were installed as specified, that the system is operating according to manufacturer's and project specifications, and that all controls are properly programmed. Bid specifications shall provide for the contractor to give school building management personnel appropriate training, operating manuals for HVAC components, and relevant information concerning equipment specifications, operations, maintenance schedules and routines.

6144 Finishes

The walls, ceilings and floors of a school shall be finished with easily cleanable surfaces in all occupied parts of the building. Finishes for all occupied areas shall use materials that emit as few VOC's as possible. The school board shall allow sufficient time prior to occupancy for curing of finishes and off gassing of potential pollutants.

6145 Energy Retrofit Projects Eligibility for State Aid, Definition

"Energy retrofit projects" include any improvements undertaken primarily to address excessive energy use or cost resulting from the design characteristics of the building. Such projects may include but are not limited to lighting retrofits, heat recovery, fuel conversions, HVAC systems & controls, and thermal shell improvements.

6145.1 Cost Effectiveness

Only those projects which have completed a life cycle cost analysis and demonstrate energy savings shall be eligible for construction aid. The life cycle cost analysis shall utilize the estimated total project costs. The life cycle cost analysis shall be for a period of time equal to the anticipated life of the proposed improvement. Life cycle cost means the present value purchase price of an item, plus the replacement cost, plus or minus the salvage value, plus the present value of operation and maintenance cost.

Only those projects that are identified as being energy cost-effective as determined by a registered professional engineer or certified architect, shall be eligible for construction aid. A statement from the engineer or architect shall accompany the school building aid application.

6200 Variance

6201 On written request of a school board, the State Board of Education may approve the use of an alternative specification or procedure for a proposed construction aid project for any requirement of these rules when it finds that the intent of the rule can be met by the alternative.

6202 No alternative to these rules may be approved under Rule 6200 which would contravene any Vermont state or federal law or regulation other than these rules.

6203 The school board shall submit the following when requesting a variance:

- 1) Evidence that strict compliance with these rules could entail practical difficulty, unnecessary cost or, hardships or is otherwise unwarranted.
- 2) Evidence that the alternative specification or procedure meets the intent of the rule.

6204 The State Board after opportunity for hearing shall grant, deny or modify the request for a variance stating its reasons therefor and any conditions attached thereto. The Commissioner shall notify the applicant in writing of the action of the State Board.

6300 General Rules For Pre-qualification Of Bidders On Contracts Over \$500,000

6310 Statutory Authority: 16 V.S.A. 559(b)

6320 Policy And Procedure

To ensure that school construction projects are bid through a fair and open process and bids are received from responsible and qualified contractors.

6330 Cross References

State Board Rules: 6000 Series - School Construction and 9000 Series Public Bids

6340 Pre-qualification Procedures

A school board shall determine which contractors are eligible to bid on school construction contracts in excess of \$500,000. For the purpose of these rules an award to a general contractor shall constitute one contract. The prequalification procedures are as follows:

1. The board shall establish prequalification criteria for the contract in question.
2. The board shall publicly advertise at least 60 days prior to proposed bid opening that it has established prequalification criteria a bidder must meet and that it is seeking interested bidders to apply for prequalification.
3. The advertisement shall include:
 - (a) A brief description of the project for which the contract will be bid
 - (b) When bids are anticipated to be opened.
 - (c) When and where prequalification statements are to be received.
 - (d) Notice that prequalification statements are to be submitted on the AIA - A305 1986 forms or most recently amended form AIA-A305, with attachments thereto, if necessary, to respond to additional pre-qualification criteria established by the board.

6341 Determination Of Pre-qualification

The school board shall review each applicants ability to perform the work required and shall prequalify an applicant if the board finds that the applicant:

- (a) maintains a clear and stable organizational structure;
- (b) holds licenses and/or registrations appropriate to the work to be performed;
- (c) has sufficient experience or expertise with related projects;
- (d) has sufficient financial capacity;
- (e) does not maintain a current construction load that would interfere with its ability to perform the work;
- (f) has positive references from credible and knowledgeable sources; and
- (g) meets any other lawful criteria established by the school board specific to the qualifications of the contractor to

perform the work required in a timely and adequate manner.

6342 Notice To Applicants

6342.1 After determining which applicants are prequalified, the school board shall notify all applicants of whether they are eligible to bid on the contract. The notice shall be in writing and shall be issued at least 30 days prior to the proposed bid opening.

6342.2 The notice sent to applicants determined to be eligible to bid on the contract shall also contain information on the availability of plans and specifications and when and how bids are to be submitted.

6400 Construction Management

6410 Statutory Authority: 16 V.S.A. §559(d)

6420 Policy And Purpose

To ensure that school construction projects using a construction management approach are bid through a fair and open process.

6430 Definitions

“ Construction manager” means, for the purpose of these rules, a person or entity providing some or all of the following services for a fee to a school board throughout a school construction process:

- (a) general advice;
- (b) value engineering;
- (c) project scheduling;
- (d) cost estimating;
- (e) project management; and

- (f) document preparation, including bids and contracts.

“Construction management” means, for the purposes of these rules, the services provided by a construction manager.

6440 Bidding For Construction Management Contracts

Contracts for construction management, except as provided in rule 6441, are not subject to the terms of 16 V.S.A. §559. However, nothing herein shall be construed to prohibit a school board from placing a contract for construction management out to bid.

6441 Construction Management/Constructor

When the school board wishes to offer a contract for construction management where the construction manager also serves as the constructor, a school board shall comply with the pre-qualification and bidding procedures contained in 16 V.S.A. §559. For the purpose of these rules a “constructor” means a person or entity which assumes a contractual obligation in exchange for a guaranteed price for the labor and materials for a school construction project.

6450 Pre-qualification Procedures

Construction management contracts subject to Rule 6441 above, shall meet the pre-qualification requirements of Rules 6340.

6460 Request For Construction Management Proposals

Upon completion of the prequalification process pursuant to Rule 6340, the school board shall submit to the prequalified construction managers a request for proposals that requests the following information:

1. a list and description of services to be provided;
2. resumes of key personnel;
3. a fixed fee for construction management services with a list and detailed breakdown of each item;
4. a fixed fee for construction services to cover overhead and profit;
and
5. a fixed fee for general conditions with a list and detailed description of each item Nothing herein shall prohibit a school board from requesting proposals that include a percentage fee.

Nothing herein shall prohibit a school board from requesting proposals that include a percentage fee.

6470 Bid Process For Construction Manager

The school board shall adhere to the requirements of 16 V.S.A. §559 when awarding a contract pursuant to Rule 6441 to a construction manager.

6471 Bid Openings

Opening and evaluation of all bids for construction management, shall be conducted at a warned school board meeting.

6480 Bid Process Under Construction Management

Where a school board has contracted with a construction manager, the board remains responsible for public bidding pursuant to 16 V.S.A., §559 for all purchases or contracts exceeding \$10,000 for school building construction, improvements, materials, supplies, equipment. All bids shall be opened and reviewed at a warned school board meeting.

6490 Miscellaneous Provisions

6490.1 The school board and construction manager may enter into a preconstruction agreement which establishes a Guaranteed Maximum Price (GMP) at the time working drawings and specifications are sufficiently complete.

If the cumulative result of the bidding process for the total scope of the project plus general conditions, and fixed fees is less than the GMP, 100% of the savings will be returned to the local school board. If when bids are received and the project cost exceeds the GMP, the school board may:

1. reject any and all bids and solicit new bids for any portion of the work to be done unless otherwise provided by 16 V.S.A. §559;
2. renegotiate the GMP; or
3. require performance under the GMP agreement.

6490.2 No labor or cost related to the services to be performed by the construction manager shall be included in the subcontractor or material suppliers bid packages.

7000 RELATIONSHIP WITH PUBLIC, OTHER AGENCIES, AND INSTITUTIONS 9/1981-6/1985

7100 Interstate Agreements

7110 Personnel Qualifications

Interstate Agreement on Qualification of Educational Personnel 16 VSA §2041-2062. (See also Series 5000 of this manual, titled School Personnel.)

7120 Vermont – New Hampshire Interstate Compact

16 VSA §771-784

7130 Vermont – New York Interstate Compact

16 VSA Chapter 16

7200 Relationship with Other Vermont State Agencies

7210 Department of Motor Vehicles, statutes related to school buses and drivers
23 VSA §1242

7220 The Departments of Highways, Public Safety, Labor and Industry, and Health have regulations pertaining to public schools. Some discussion of these appears in the Vermont Department of Education booklet, *“Planning Educational Environments”* (See 6104 above). The complete regulations may be obtained from the respective agencies. The Agency of Environmental Conservation enforces Health Department regulations and the Department of Labor and Industry enforces safety regulations.

7230 University of Vermont, Educational Television

16 VSA §2801-2805

7240 Vermont State Colleges – Nursing Education

16 VSA §2635

7260 Education Building Finance Agency

16 VSA §3851-3862

7270 The Higher Education Planning Commission is established by executive order of the governor to plan and coordinate higher education in the state. The Commissioner of Education serves on the Commission.

7280 Advisory Councils

7300 Relationship with Other Educational Institutions and Agencies

7310 Post-Secondary Educational Institutions

7311 Approval: 16 VSA §174. See also 2240 of this manual.

7312 Records: 16 VSA §175. See also 2244 of this manual.

7320 Recognized Accrediting Agencies

Certain regional agencies have been recognized by the State Board of Education for accrediting purposes:

New England Association of Schools and Colleges
Burlington, Massachusetts

Middle States Association of Colleges and Schools/ Commission
on Higher Education
Philadelphia, Pennsylvania

Northwest Association of Schools and Colleges
Seattle, Washington

Southern Association of Colleges and Schools – Commission on
Colleges
Atlanta, Georgia

Western Association of Schools and Colleges – Accrediting
Commission for Senior Colleges
Oakland, California

North Central Association of Colleges and Schools
Chicago, Illinois

Office of Overseas Schools, Department of State
Washington, D. C.

Department of Education, Northern New England Conference of
Seventh Day Adventists
Portland, Maine

Diocesan School Board
Burlington, Vermont

National Association of Trade and Technical Schools
(For non-degree granting purposes only.)
Washington, D. C.

7330 Private Schools Designated as Public Schools - 16 VSA §827

8100 SCHOOL LUNCH PROGRAMS

8100 School Lunch Programs

Statement of Purpose

The purpose of school lunch programs is to safeguard the health and well being of Vermont's children, to assist the schools to serve nutritious lunches to children each school day, and to teach and model good nutrition habits in the schools.

8110 Statutory Authority: 16 VSA §1262b, 42 U.S.C. §1751 et seq.

8111 Grants from state or federal funds to school boards pursuant to 16 VSA §1262a(a) shall be awarded in a manner consistent with the National School Lunch Act as amended from time to time and its accompanying regulations found in Title 7 of the Code of Federal Regulations as amended from time to time.

8112 Each recipient school board as that term is defined in 16 VSA §1261a shall adopt, maintain and update as necessary a policy on the provision of school lunches in accordance with these rules and state and federal law and regulations.

8113 In the 1988-1989 school year, and as federal requirements are amended, the Commissioner shall provide to each recipient school board a copy of the relevant federal regulations governing school lunch programs. In addition, in the 1988-1989 school year and as federal requirements are amended, the Commissioner shall provide to each recipient school board a summary of federal eligibility requirements for school lunch programs, as well as requirements relating to confidentiality, non-discrimination, nutritional standards, and financial accountability.

8120 In any fiscal year, no more than ten percent of state funds made available for school lunch programs pursuant to 16 VSA §1262a(a) may be awarded for the purchase of equipment for school lunch programs. The remainder of state funds must be awarded for the operation of school lunch programs on a per meal basis. Requests for funds from the state board to purchase equipment for school lunch programs shall be made on a form developed by the Commissioner and awards made on the basis of criteria developed by the Commissioner. Such criteria shall be designed to equitably distribute available funds to programs most in need and at minimum shall require consideration of the following factors:

- (1) Percentage of children eligible for free and reduced-price meals,
- (2) Condition of existing equipment,
- (3) How new equipment will improve the food service program, and
- (4) Local matching funds available.

8130 All prior state board regulations governing the operation of school lunch programs are hereby repealed.

Child and Adult Care Food Program

8200 Approval of New Family Day Care Home Sponsors

8210 Purpose

The purpose of the Child and Adult Care Food Program (CACFP) is to ensure that nutritious meals are available to children and adults in day care settings. Federal regulations require that home day care providers participate in the program through a sponsoring organization. This structure assures that home day care providers receive the support, training and monitoring needed to accomplish the goals of the program.

Sponsoring organizations can best provide these services under the following conditions:

The organization has sufficient administrative capacity to meet accounting, record keeping and monitoring requirements.

A variety of support and training services are made available to providers which can enhance the home day care experience for children and ensure compliance with day care and food program regulations.

Sponsoring organizations have specific areas to serve so that competition among organizations for homes does not lead to interruptions or duplication of service or poor compliance with program regulations and day care providers have one local organization to deal with.

8220 Process

Any new organization applying for sponsorship must demonstrate a need for services in the requested geographic area.

Therefore, the approval process for new sponsors of family day care homes in the CACFP shall be as follows:

- 8221 A potential new sponsor shall submit a letter of request for an application to the Commissioner of Education (hereinafter “Commissioner”) which delineates the area the organization proposes to serve.
- 8222 The Commissioner or his or her designee shall inform current sponsors within ten days that the letter of request for an application has been received.
- 8223 The applicant organization shall complete a CACFP proposal (hereinafter “proposal”), on a form provided by the Commissioner, which includes the following:
 - a. A list of at least 40 non-participating home day care providers who are located in the service area described in the letter of request and who have indicated that they wish to enlist in the program, as well as copies of the 40 providers’ day care registrations. In addition, the applicant organization must demonstrate that the number of day care homes they have potentially recruited represents a sufficient number to make a viable sponsorship in light of the proposed structure of the applicant organization.
 - b. Board of Directors information including names, titles, and functions of members, proof of the organization’s tax exempt status, and copies of previous year’s audit summary.
 - c. Documentation of financial and administrative capability for program operations including information about the history of the organization’s management of other federal programs, if any.
 - d. A management plan describing employee names, specific job descriptions, an organizational chart, and a program budget.
 - e. A description of general employment policies including office hours, hiring and termination of employees, non-discrimination, and employee salary and benefit levels.

- f. A listing of proposed CACFP policies including provider monitoring and corrective action, non-discrimination, hearing/appeals procedures, meal disallowance, monitoring and corrective action.
- g. A plan for outreach activities.
- h. A plan for training both staff and providers.

8224 Upon receipt of notification that a letter of request for an application has been submitted, the Commissioner shall notify all potentially affected sponsors in the area described by the applicant. Any such sponsors may submit documentation regarding recruitment history in the proposed area and the reasons for failure to enroll the non-participating day care homes. This information shall be considered when the proposal is evaluated.

8225 The proposal shall be reviewed for completeness. If any item is incomplete, the applicant shall be informed within 15 days, and the missing/incomplete information requested.

8226 Once a complete proposal has been submitted, it will be evaluated by a team of three reviewers designated by the Commissioner. If the proposal meets the criteria for approval, the organization shall be sent an agreement packet to complete.

8227 The applicant and potentially affected sponsors shall be notified of approval or disapproval within 30 days of receipt of a completed proposal.

8230 Criteria for Approval

Approval for a new day care home sponsor shall be based on the applicant successfully documenting the following:

8231 The needs assessment demonstrates a sufficient number of non-participating home providers in the proposed area to warrant an additional sponsor.

8232 The applicant demonstrates the administrative capacity to maintain the accounts necessary to receive federal funds. Administrative capacity includes bookkeeping systems that meet federal reporting requirements, office support and equipment, and previous experience in managing public funds.

- 8233 The applicant organization has sufficient personnel to provide the training, monitoring, and record keeping required by the program.
- 8234 The applicant organization demonstrates a thorough understanding of the requirements of CACFP and demonstrates competency in menu planning, files management, day care licensing regulations, the day care registration process, and provider review schedules.
- 8235 The applicant organization offers additional services or benefits to the home care providers they propose to sponsor and provides information about how these services improve the day care climate, offer more support for children or enhance the likelihood of compliance with regulations.

8240 Establishment of New Territories

In approving a new sponsor, the Commissioner shall outline the territory to be served either by using the service area described in the application or a portion of it depending on the documentation of need. Once this new territory has been defined, the following process shall be used to realign sponsor areas to re-establish exclusive territories.

- 8241 Beginning ten days after the notice of approval of the application, newly recruited homes in the new sponsor area shall be sponsored by the new agency.
- 8242 Transfer of participating homes from an existing sponsor to the appropriate new sponsor shall occur at the start of the next fiscal year as part of the sponsor renewal process.
- 8243 Should the number of homes to be transferred exceed 25, the transfer may be completed at the beginning of the third federal fiscal year at the discretion of the sponsor from whom the homes will be transferred.
- 8244 The new sponsoring organization and other organizations affected by the approval may agree to a mutually acceptable alternative timetable for transfer of homes, not to exceed two years, so that administrative funds and staffing levels are adjusted gradually.

8250 Appeals Process

An organization whose application for sponsorship is denied or one affected by the approval of a new sponsor shall be given the opportunity to appeal the decision.

- 8251 A written notice of the action taken by the Commissioner shall be sent to the applicant and all affected organizations.
- 8252 If an organization wishes to appeal the decision, it shall request an appeal in writing within 30 days of the notice of action letter.
- 8253 The hearing officer shall be the Commissioner of Education or his/her designee.
- 8254 The appeal procedure shall be as set forth in Rule 1232 of the Vermont State Board of Education Manual of Rules and Practices.
- 8260 Designation of Day Care Home Sponsors and Territories

The following day care home sponsors, until amended in accordance with the procedures set forth herein, shall serve exclusively the following service areas:

- a. Bennington-Rutland Opportunity Council: Bennington and Rutland Counties
- b. Central Vermont Community Action Council: Orleans County, Caledonia County with the exception of the Town of Hardwick, Washington County, Orange County, and Windsor County from Bridgewater to Woodstock and all north of Hartland.
- c. Childcare Resources and Referral Service: Chittenden County with the exception of the Town of Milton.
- d. The Family Center: Franklin and Grand Isle Counties and the Town of Milton.
- e. Lamoille Family Center: Lamoille County and the Town of Hardwick.
- f. Mary Johnson Children's Center: Addison County
- g. Windham Child Care Association: Windham County, Windsor County north to Plymouth, Reading, West Windsor and Windsor inclusive.

9000 PUBLIC BIDS

9001 Definitions

9001.1 “Publicly advertise or invite” means, for the purposes of 16 VSA §559(a), to seek bids on goods or services through written communication mailed, personally delivered, published in a newspaper of general circulation or printed in a newsletter or trade publication. The written communication need not contain all the bid specifications but may generally describe the item to be bid upon and provide information on how further uniform written specifications may be obtained.

9001.2 “Through no fault of its own” means, for the purposes of 16 VSA §559(f) one or more of the following:

- (a) Fewer than three bidders are reasonably available to bid on the goods or services, or fewer than three bids were received after reasonable advertisement and/or invitation were attempted.
- (b) The price of a particular product or service is fixed by corporate policy.
- (c) Any other reason the public bid procedure set forth in 16 VSA §559 cannot be complied with, as approved by the Commissioner, not because of a lack of effort by the board but because of circumstances particular to the nature of the product or service or the vendor or supplier.

9001.3 “Fair and public process” means, for the purposes of 16 VSA §559(f) that the board documents why advertising or inviting three bids would be or has been futile and documents why the process it proposes or attempted for seeking bidders offers or offered a reasonable opportunity for vendors or suppliers to be put on notice of the request for bids without intentional favoritism toward any potential or actual bidder.

9001.4 “Newspaper of general circulation” means a newspaper of record as approved by the Secretary of State having general circulation in the part of the state in which the school district is located.

9001.5 “Lowest responsible bid or bids conforming to specifications” as contained in 16 VSA §559(c), means both the amount of the base bid and any alternate bids responsive to priorities set forth in the bid specifications.

9002 Waiver of public bidding requirements

9002.1 The Commissioner may grant exceptions to the provisions of 16 VSA §559 where the board seeking the exception demonstrates that it is unable to comply with the bidding procedure through no fault of its own and it has proposed an alternative method of keeping costs down through a fair and public process.

9002.2 A board seeking such an exception shall do so in writing to the Commissioner and shall fully describe the reasons it cannot comply with the requirements of 16 VSA §559 and the process it proposes to substitute for such requirements. No purchase or contract may be entered into until such time as the Commissioner has approved the purchase or contract. The Commissioner shall respond in writing to the request for an exception within ten working days after receipt of the request. The response shall grant or deny the request or ask for further information.

9100 NET COST PER PUPIL

9101 Statutory Authority

A §825, Maximum tuition rate, calculated net cost per pupil defined

9102 Federal and State Handbooks: Incorporated by Reference

The definitions and classification of revenues, expenditures, and programs contained in *Financial Accounting for Local and State Systems*, published by the U.S. Department of Education, and *Handbook for Financial Accounting of Vermont School Systems: Financial Code Classification System*, published by the Vermont Department of Education, are hereby incorporated by reference.

9103 General Rule

Net Cost per Pupil for purposes of regular education elementary and secondary tuition shall be calculated as the sum of:

- (a) Net Regular Education Elementary/Secondary Current Instructional Cost per Pupil, and
- (b) Net Regular Education Elementary/Secondary Facility Acquisition and Construction Cost per Pupil.

9104 Definitions

9104.1 Net Regular Education Elementary/Secondary Current Instructional Cost per Pupil

Net Regular Education Elementary/Secondary Current Instructional Cost per pupil means:

- (a) Net Regular Education Elementary/Secondary Current Instructional Cost
- (b) Divided by the Average Annual Full Time Equivalent Student membership in the Regular Education program.

9104.2 Net Regular Education Elementary/Secondary Current Instructional Cost

Net Regular Education Elementary/Secondary Current Instructional Cost means:

- (a) Elementary/Secondary Current Instructional Expenditures less:
 - (1) Special education expenditures eligible for reimbursement or recovery through the special education funding formula or other means.

- (2) Area vocational-technical center expenditures.
- (3) Expenditures for transportation to and from school for resident students. Co-curricular transportation expenditures are included as an instructional cost.
- (b) Reduced by revenues:
 - (1) From local sources that serve to offset some or all of the cost of providing a service, to the extent that the corresponding expenditures are included in the Elementary/Secondary Current Instructional Expenditures.
 - (2) From state and federal sources that must be used for a categorical or restricted purpose, to the extent that the corresponding expenditures are included in the Elementary/Secondary Current Instructional Expenditures.

9104.3 Elementary/Secondary Current Instructional Expenditures

Elementary/Secondary Current Instructional Expenditures means all Current Operating Expenditures in that year to provide direct instructional programs and supporting services for elementary/secondary students.

Specifically excluded are expenditures for:

- (a) Non-instructional programs, such as food service
- (b) Programs that are intended to be largely self-supporting (enterprise) operations
- (c) Adult/continuing education programs
- (d) Community Services
- (e) Facility Acquisition and Construction Services

9104.4 Current Operating Expenditures

Current Operating expenditures means all expenditures of the year for salaries and wages, employee benefits, purchased services, and supplies and materials. For purposes of calculating Net Cost per Pupil, expenditures for equipment shall be treated as a Current Operating Expenditure.

9104.5 Net Regular Education Elementary/Secondary Long-term Facility Cost per Pupil

Net Regular Education Elementary/Secondary Long-term Facility Cost per Pupil means:

- (a) Net regular Education Elementary/Secondary Long-term Facility Cost

- (b) Divided by the Average Annual Full Time Equivalent Student membership in the Regular Education Program.

9104.6 Net Regular Education Elementary/Secondary Long-term Facility Cost

Net Regular Education Elementary/Secondary Long-term Facility Cost means:

- (a) Elementary/Secondary Long-term Facility Cost less expenditures for:
 - (1) Area vocational-technical centers.
 - (2) Maintenance and payments of principal and interest for buildings used exclusively for boarding students.
- (b) Reduced by revenues that serve to offset some or all of the cost of providing a school facility, to the extent that the corresponding expenditures are included in the Elementary/Secondary Long-term Facility Cost, from:
 - (1) Local, state, or federal sources.
 - (2) Proceeds of long-term or short-term borrowing.

9104.7 Elementary/Secondary Long-term Facility Cost

Elementary/Secondary Long-term Facility Cost means all expenditures of the year for:

- (a) Acquisition of land and buildings.
- (b) Remodeling buildings.
- (c) Constructing buildings and additions to buildings.
- (d) Initially installing or extending service systems and other built-in equipment.
- (e) Site improvements.
- (f) Principal and interest payments on long-term debt to fund such expenditures.

Specifically excluded are expenditures for:

- (a) Non-instructional programs, such as food service
- (b) Programs that are intended to be largely self-supporting (enterprise) operations.
- (c) Adult/Continuing education programs.
- (d) Community Services.

9104.8 Average Annual Full Time Equivalent Student Membership

Average Annual Full Time Equivalent Student Membership is the Average Full Time Equivalent Student Membership over the period of the entire school year.

9104.9 Average Full Time Equivalent Student Membership

Average Full Time Equivalent Student Membership means the sum of the Full Time Equivalent Student Membership for each day divided by the number of days in the period. Average Full Time Equivalent Student Membership for any month is equal to the total Full Time Equivalent Student Membership for each day that school is in session during that month, divided by the number of days school is in session during that month. Average Full Time Equivalent Student Membership adjusts the Full Time Equivalent Student Membership count for fluctuations that occur during the period.

9104.10 Full Time Equivalent Student Membership

Full Time Equivalent Student Membership means Student Membership stated as the equivalent number of full-time students. Full Time Equivalent (FTE) Student Membership adjusts the Student Membership count for part-time students, students who spend part of the day in another school or program, and students who enter or withdraw from the rolls.

9104.11 Student Membership

Student Membership means the period of time a student's name is on the current roll of a class or school, while the school is in session, regardless of his or her presence or absence. A student is a member of a class or school from the date he or she enters until his or her name is withdrawn or removed from the rolls.

9105 Elementary/Secondary net costs

Separate amounts for the net cost per pupil shall be calculated for:

- (a) Elementary grades (K-6)
- (b) Secondary grades (7-12)

9106 Annual Worksheet

Annually, on or before December 1, the Department shall provide a worksheet for each school district to assist in calculating net cost per pupil.

9200 FULL TIME EQUIVALENT ENROLLMENT OF PUPILS

9200.1 Statutory Authority: 16 VSA §4001(1)

9200.2 General Definition

For the purposes of 16 VSA §4001(1), “full-time equivalent enrollment of pupils” for K-12 pupils means enrollment for the minimum hours per week in each grade as required by Rule 2311.4. No pupil shall be counted as more than one in full-time equivalent enrollment.

9200.3 K-12 Pupils Attending Less than Full-time

For K-12 pupils attending school for fewer than the minimum number of hours required per week, the percentage of full-time equivalent enrollment in each grade shall be calculated by applying the ratio of actual hours such pupils are enrolled per week to the minimum hours per week required by Rule 2311.4 for that grade.

9200.3.1 A student enrolled as a home study student pursuant to 16 VSA §166b who is not a part-time student enrolled in academic programs, but who participates in one or more co-curricular or extracurricular activities at a public school, shall be counted as .03 of a full-time equivalent student for each activity in which he or she participates. For purposes of this provision, the reporting period shall be from beginning of the 41st day of a school year to the end of the 40th day of the following school year.

9200.4 Repealed 7/5/08 see [Rule 2600 Prekindergarten Education](#)

9200.5 Adult Diploma Program/Adult Pupils

- (a) For pupils enrolled in the Adult Diploma Program, the percentage of full-time equivalent enrollment shall be calculated by applying the ratio of per-pupil cost to the district to the General State Support Grant.
- (b) For all other adult pupils who are not enrolled full time, the percentage of full-time equivalent enrollment shall be calculated by applying the ratio of the number of hours enrolled per week to 27.5 hours.

9200.6 Collection of Data

The information required to calculate full-time equivalent enrollment shall be submitted to the Commissioner in the Average Daily Membership Data collection no later than November 15 of each year.

May 1, 2001

9300 ALLOWABLE AND EXTRAORDINARY TRANSPORTATION EXPENDITURES

9301 Statutory Authority

Subsection 22 (c) and (d) of Act 60 of the 1997 Session

9302 Definition of Allowable Transportation Expenditures

9302.1 For the purposes of Subsection 22 (c) of Act 60 of the 1997 Session, “allowable transportation expenditures” means the cost of transporting students on one trip per school day to and from the school of enrollment. Allowable transportation expenditures do not include expenditures for transporting students participating in such curricular activities that take place off the school grounds as work placement or technical education programs, or for transporting students participating in such co-curricular or extracurricular activities as field trips or athletic competitions. Allowable transportation expenditures are net of any revenues received for transporting students to and from school. Allowable transportation expenditures do not include any expenditures which are eligible for reimbursement or payment elsewhere.

9302.2 Depreciation of school buses is an allowable transportation expenditure. Depreciation equals one-seventh of the purchase price of a bus per year for seven years. Only the portion of depreciation attributable to the transportation of students on one trip per school day to and from school may be claimed as an allowable transportation expenditure. (Methods for separating eligible from ineligible portions of transportation expenditures are detailed in the *Handbook for Financial Accounting of Vermont School Systems*, Appendix A, Function Code 2700.)

9302.3 Depreciation of a school bus begins in the year a bus was purchased new. A bus more than seven years old in the Fiscal Year being reported is considered fully depreciated.

9302.4 In a bus leasing arrangement concluding with the district owning the buses at the end of the lease, the portion of the lease applied to the purchase price is considered an installment purchase rather than a rental. The district must establish the Fair Market Value (FMV) of the buses at the time of the lease. Depreciation is calculated as one-seventh of the FMV per year for seven years.

9303 Application and Award

A school district shall be reimbursed under this section based on a completed transportation reimbursement worksheet prescribed by and submitted to the Commissioner as part of the Annual Statistical Report of Schools on or before August 15 of the current fiscal year. Transportation expenditures shall be incurred in one fiscal year, reported in the next fiscal year, and reimbursed in the following fiscal year.

9304 Definition of Extraordinary Transportation Expenditures

9304.1 For the purposes of Subsection 22 (d) of Act 60 of the 1997 Session, “extraordinary transportation expenditures” are those reimbursable transportation expenditures reported in the Annual Statistical Report of Schools which for any school district:

- (a) exceed the threshold percentage, and
- (b) are due to unavoidable and unusual circumstances related to the location of the school building within the district; the topographical features of the district; the need to transport tuitioned students outside the district; the condition of the roads; or other unusual circumstances.

9304.2 For the purposes of this rule, the “threshold percentage” is determined by calculating each district’s allowable transportation expenditures as a percentage of that district’s General State Support Grant (GSSG) net any GSSG funds contributed directly to a technical center on that district’s behalf. The threshold percentage is the percentage at the 96th percentile of districts included in the calculation. Only districts with allowable transportation expenditures are included in the calculation.

9305 Application and Award

9305.1 The Commissioner shall announce the threshold percentage on or before November 1 of the reporting fiscal year based on the reported transportation figures. The threshold percentage may be adjusted based on data corrections submitted through January 15 of the reporting fiscal year as provided for in 16 V.S.A. Sec. 4030 (b).

9305.2 A district with reimbursable transportation expenditures exceeding the announced threshold percentage may apply to the Commissioner by December 15 of the reporting fiscal year. The application shall describe the extraordinary nature of the expenditures in relation to Rule 9304.1 (b). The Commissioner of Education shall inform districts of the amount determined to be extraordinary transportation expenditures by February 1. Reimbursement shall be made in the fiscal year following the Commissioner’s determination.

- 9305.3 The Commissioner shall award an amount equal to transportation expenditures in excess of the threshold percentage determined to be extraordinary transportation expenditures. If the amount of expenditures eligible for reimbursement statewide exceeds the funds appropriated for this purpose, funds shall be distributed proportionally.

9306 Effective Dates

- 9306.1 The allowable transportation aid provisions of this rule take effect on July 1, 2001.
- 9306.2 The extraordinary transportation aid provisions of this rule take effect on July 1, 2002.

9500 REPORTING STUDENTS FOR WHOM ENGLISH IS NOT THE PRIMARY LANGUAGE

9501 Each school district shall report, as part of its average daily membership count, pursuant to 16 VSA §4010(e), the number of students for whom English is not the primary language. A student shall be determined to be a “student for whom English is not the primary language”, for purposes of this rule if:

- (a) the student
 - (i) has a primary or home language that is not English as indicated on the State of Vermont, Primary/Home Language Survey form, and
 - (ii) within the preceding twelve months has been assessed for and found to be limited English proficient (LEP) by a qualified professional using an appropriate English as a second language assessment including but not limited to, the IDEA proficiency test, Language Assessment Scales, or the Maculaitis Assessment; or
- (b) the student after having been identified in accordance with subparagraph (a) continues to be eligible for and receive ESL services in the district. Students in this subparagraph may be counted for a period not to exceed five years from the date of the assessment described in subparagraph (a); or
- (c) the student has received over five years of ESL services but remains LEP because in the opinion of a qualified professional, he or she has not demonstrated English proficiency in all basic skill areas, as measured by multiple means, and as a result, has not demonstrated acceptable performance in content subjects; or
- (d) the student is, in the opinion of a qualified professional, unable to be assessed through the assessment mechanisms set forth in subdivision (1)(a) due to non-English proficiency.

9502 A student shall not be determined to be a “student for whom English is not the primary language” if:

- (a) the student although otherwise qualified to receive ESL services, is not legally entitled to receive such services because the student is a foreign exchange student or for other legally cognizable reasons; or
- (b) the student, because of successful completion of ESL services, is English proficient in all basic skill areas, as measured by multiple means, and demonstrates acceptable performance in content subjects.

9503 For purposes of this rule, until June 30, 2000, “qualified person” means a person who has an understanding of first and second language acquisition, understands the cultural issues associated with second language acquisition, and has the ability to select, administer, and interpret appropriate procedures for identification, screening, assessment and monitoring of progress of ESL students. On or after

July 1, 2000, a qualified person is one who holds an English as Second Language (ESL) K-12 endorsement.

June 29, 1991

**10000 COORDINATION OF SERVICES TO CHILDREN AND ADOLESCENTS
WITH A SEVERE EMOTIONAL DISTURBANCE***

10100 Statement of Purpose

These rules are jointly promulgated by the Vermont Departments of Mental Health and Mental Retardation (DMHMR) and Social and Rehabilitation Services (SRS) and the Vermont State Board of Education to implement the provisions of Act 203 of the 1990 Adjourned Session. It is the intent of these rules that improved coordination among the three agencies and the local service providers will result in improved services for children and adolescents with a severe emotional disturbance.

Nothing in the provisions of this chapter shall be construed to grant an entitlement to any child or adolescent with a severe emotional disturbance to receive any educational residential, mental health or other service until and unless the general assembly further provides that such children and adolescents or any subgroup thereof are so entitled.

10200 Statutory Authority

33 VSA §4305(b)

10300 Definitions

For the purposes of these rules, a “child or adolescent with a severe emotional disturbance” means a child or adolescent who meets the criteria set forth in 33 VSA §4301(3) and who is in need of coordinated services. For the purposes of these rules, a “child or adolescent with a severe emotional disturbance” shall be referred to as an “eligible child”.

For the purpose of these rules, the “lead agency” is that agency which has the responsibility for the coordination of (1) the assessment of the eligible child and (2) the development of the coordinated service plan.

10400 Guidelines for Local Interagency Team Procedures

Each Local Interagency Team (LIT), with public participation, shall develop written procedures for interagency collaboration concerning eligible children. “Public participation” should, at a minimum, include at least one public meeting with notice thereof in a newspaper of general circulation in the region. Each Local Interagency Team shall develop procedures in a step-by-step format in the areas of training interagency personnel, interagency collaboration, case

*Renumbered for the reason of conflicting with the SBE Manual Rules numbers.

management, and provision for notice to parents, guardians, and involved agencies. The following rules are guidelines for suggested procedures that shall be submitted on or before February 1, 1992 by the Local Interagency Teams to the advisory board established pursuant to 33 VSA §4303 and then to the Commissioners of DMHMR, SRS, and Education for approval.

10401 Training of Interagency Personnel

The interagency team procedures shall provide for the training of interagency personnel in the following subjects:

- A. the rationale for coordinated services;
- B. the development and implementation of coordinated service plans;
- C. the responsibility of personnel for implementation of the procedures and provision of coordinated services generally, and
- D. the procedures and responsibilities of all agencies involved in the provision of services to eligible children.

10402 Lead Agency Assignment

- A. In the case of an adjudicated child on the SRS caseload, SRS shall be the lead agency.
- B. In the case of non-adjudicated child where the presenting problems are primarily educational in nature, the lead agency shall be the local school district.
- C. In all other cases, the community mental health agency shall be the lead agency.
- D. The lead agency shall, where necessary, arrange for case management. Local procedures for fixing case management responsibility shall, generally, follow the same criteria as that which is used for determining lead agency.

10403 Interagency Collaboration

The interagency team procedures shall provide for the referral and assessment of eligible children; development of coordinated service plans; revision and annual review of such plans; and time frames for interagency collaboration as follows:

A. Referral

1. A referral for a coordinated service plan may be made by a parent, guardian, service provider, educator or advocate.
2. Written consent from the child's parent or guardian shall be obtained before the referral is accepted.
3. The procedures shall contain a clear designation of the agency or person to whom referrals are made and an explanation of how a referral is made.
4. A referral should be made under the following circumstances:
 - (a) a child appears to meet the definition of an eligible child; and
 - (b) the child is being served by a school, a community mental health agency or the Department of Social and Rehabilitation Services; and
 - (c) the child is in need of coordinated services.

B. Assessment

Sufficient information shall be gathered through a documented process to determine if the child is eligible for a coordinated service plan. "Documented process" shall consist of a form supplied or approved by the State stating that the assessor has determined whether or not a child or adolescent has a severe emotional disturbance. The form shall also indicate that the assessor has reviewed evaluations and/or has observed the child or adolescent. No assessment shall be required if a child or adolescent, prior to the effective date of these regulations, has been determined to have a severe emotional disturbance or has been receiving coordinated services. The procedures shall identify the agency responsible for assessing the child.

C. Development of a Coordinated Service Plan

1. To the extent practicable, the development of the coordinated service plan shall involve the eligible child, the child's family, all relevant service providers and, in the case of an adjudicated child, the child's attorney.

2. The lead agency shall ensure that the plan is drafted.
3. The plan shall be signed by all the participants.

D. Annual review

The plan shall be reviewed at least annually.

- E. The plan may be revised at the request of the child, the child's family, any relevant service providers, or in the case of an adjudicated child, the child's attorney and, to the extent practicable, all such persons shall be involved in any revision of the plan. The plan shall be revised whenever a significant change is made, and, wherever possible, should be revised prior to the change.

F. Time Frames

The following are recommended time frames for local procedures:

1. Eligibility for a coordinated service plan should be determined within 30 days of the receipt of consent.
2. A coordinated service plan should be developed within 60 days of determination of eligibility.
3. A decision as to revision of a coordinated service plan shall be made within 30 days of the request for revision or within 30 days of the date a significant change is made.

10404 Notification

A. Public Notification

Each Local Interagency Team shall develop and implement a procedure for notifying the public of the existence of the process for obtaining coordinated services. Public participation shall be documented in developing this procedure.

B. Service Provider Notification

Each Local Interagency Team shall notify local service providers of the process for eligible children to obtain coordinated services.

- C. The notice required in subsections A and B above shall include an explanation of the existence, purposes and procedures of the Local Interagency Team.
- D. Local procedures shall provide that the lead agency shall ensure notice to the child's parents, legal guardian, the child's attorney, in the case of an adjudicated child, and any relevant service providers regarding the following:
 - 1. Determination of eligibility or ineligibility;
 - 2. Development of coordinated service plans;
 - 3. Revisions to a coordinated service plan;
 - 4. Annual Review.

10500 Protection of the Right to Consent and of Confidentiality

Each Local Interagency Team shall develop written procedures for protecting the rights of eligible children and their parents and guardians concerning consent and confidentiality. These procedures shall include:

- A. A policy requiring that the local interagency team regard all information received on a particular case as confidential and that no such information be disclosed without appropriate consent. Such policy shall be consistent with the policy and rules of the three individual agencies regarding confidentiality.
- B. A form for parents or guardians to sign consenting to referral for a coordinated service plan.
- C. A form for parents or guardians to sign releasing information to relevant service providing agencies.

10600 Dispute Resolution

- A. Each Local Interagency Team shall develop a notice for parents, guardians and service providers describing procedures for dispute resolution. The notice shall include the following:
 - 1. Local Interagency Team

Where the eligible child's planning team cannot reach consensus on a coordinated service plan or is unable to implement such a

plan, a referral may be made by any participating party to the Local Interagency Team for resolution.

2. State Interagency Team (SIT)

Where the Local Interagency Team is unable to resolve any of the issues set forth in subsection (A) (1) above, a referral may be made by the Local Interagency Team to the State Interagency Team for resolution.

3. Appeal Process

Where the State Interagency Team is unable to resolve a dispute concerning coordination among the various agencies, it shall inform all participating parties of the right to an appeal process. The appeal process shall consist of a hearing pursuant to Chapter 25 of Title 3. The hearing shall be conducted by a hearing officer appointed by the Secretary of the Agency of Human Services and the Commissioner of Education. Based upon evidence presented at the hearing, the hearing officer shall issue written findings and proposals for decision to the Secretary and the Commissioner. The Secretary and the Commissioner may affirm, reverse, or modify the proposals for decision.

4. Procedural Safeguards

Nothing in these rules shall be construed to limit any existing substantive or procedural protections of state or federal law or regulations.